

91-879

(1)

Supreme Court, U.S.

FILED

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No. _____

In The
Supreme Court of the United States
October Term, 1991

KOREAN UNITED PRESBYTERIAN
CHURCH OF LOS ANGELES,

Petitioner,

v.

PRESBYTERY OF THE PACIFIC; SYNOD OF
SOUTHERN CALIFORNIA AND HAWAII;
THE UNITED PRESBYTERIAN CHURCH
OF THE UNITED STATES,

Respondent.

Petition For A Writ Of Certiorari
To The Court Of Appeal
Of The State Of California

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the application of "neutral principles," as approved in *Jones v. Wolf*, for resolving church property disputes gives state courts sufficient guidance in weighing conflicting Establishment and Free Exercise Clause claims in church property disputes.

2. Whether the California Court of Appeal deferred to hierarchical authority in violation of petitioner's right to Free Exercise of religion.

3. Whether, by deferring to hierarchical authority under the guise of applying neutral principles, the California Court of Appeal became impermissibly entangled in petitioner's affairs, in violation of the Establishment Clause of the First Amendment.

PARTIES TO THE PROCEEDINGS BELOW

There were no parties to the proceedings below other than those named in the caption.

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**PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA**

The Korean United Presbyterian Church, Inc., petitions for a writ of certiorari to review the judgment of the Court of Appeal of the State of California.

OPINIONS BELOW

The statement of decision of the trial court, App. 44, is not reported. The opinion of the California Court of Appeal, App. 63, is reported at 230 Cal. App. 3d 480, 281 Cal. Rptr. 396. The order denying the petition for review in the California Supreme Court is not reported.

JURISDICTION

The judgment of the Court of Appeal of the State of California was entered on May 23, 1991. The order of the Court of Appeal of the State of California denying rehearing was entered on June 19, 1991. The order of the California Supreme Court denying the petition for review was entered on August 29, 1991. The jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

1. The First Amendment to the United States Constitution provides, in part: "Congress shall make no law

respecting an establishment of religion, or prohibiting the free exercise thereof "

2. The Fourteenth Amendment to the United States Constitution, Section 1, provides, in part: "No State shall deprive any person of life, liberty or property without due process of law "

STATEMENT

1. Founded in 1906, the Korean United Presbyterian Church of Los Angeles is the oldest Korean immigrant church in the United States. C.T. 286. Until the events giving rise to this action, the Korean Church was affiliated with the Presbyterian Church U.S.A., an entity created in 1983, and before that the Korean Church was affiliated with the United Presbyterian Church in the United States of America. C.T. 286-87.

The principal respondent, the Presbytery of the Pacific, is the entity in the hierarchy of the Presbyterian Church that had direct responsibility for overseeing the religious affairs of the Korean Church. By way of this suit, petitioner sought to resolve any questions concerning the ownership of its church property on West Jefferson Boulevard in the City of Los Angeles. The property was paid for, improved and continuously occupied by petitioner, and all taxes, utilities and maintenance have been paid and continue to be paid by those who are now deprived of the use of the property by this decision.

2. Petitioner filed a complaint on December 1, 1988, in the Superior Court of the State of California, alleging

several causes of action including quiet title and declaratory relief. App. 1. The causes of action were severed, and the case was tried on December 26 and 27 before the Hon. Dion Morrow on the first two causes of action, to quiet title and for declaratory judgment. Judge Morrow filed a written statement of decision on January 8, 1990, App. 44, and a final judgment in favor of the Korean United Presbyterian Church on those two causes of action was entered on February 2, 1990.

The trial court found, by "clear and convincing evidence, that the petitioner, Korean United Presbyterian Church of Los Angeles, is the owner of and entitled to the entire beneficial interest in, and possession of, each of the parcels of the subject real property." App. 45. In making its determination, the trial court applied "neutral principles of law" in accordance with California precedent. App. 55. See *Protestant Episcopal Church v. Barker*, 115 Cal. App. 3d 599, 171 Cal. Rptr. 541 (1981). The trial court flatly rejected respondents' contention that the Korean Church was held in trust for the Presbytery. Noting that the dispute over the property began as a disagreement over real estate financing rather than religious doctrine, App. 53, the trial court was properly concerned first with resolving the ownership question, if possible, without reference to the Presbyterian religious organizational code, the Book of Order. Looking at the history of the real estate transactions involving the Korean Church and the Presbytery, the trial court found "no indication of the intent to form any such trust" in favor of the Presbytery. It further noted that the Korean Church and the Presbytery had available (but had not employed) specific provisions of the California Corporations Code that were the

exclusive means under California law to create such a trust. Finally, despite the form of the deeds, the property in question had been acquired for the Korean Church directly, and not for the ultimate benefit of the Presbytery. App. 57-58. Significantly, the trial court resolved the dispute on the evidence concerning the deeds and the history of ownership of the corporate property, and looked at the religious organizational documents, such as the Book of Order, only to the extent necessary to determine that they did not conflict with the secular record.

3. The Presbytery appealed to the California Court of Appeal. In an opinion filed May 23, 1991, the Court of Appeal reversed the trial court. App. 63. The Court of Appeal also purported to apply neutral principles, but appeared to place much more weight on a series of religious determinations than on the secular transactions that should have informed its analysis.

A petition for rehearing in the California Court of Appeals was denied on June 19, 1991. Petitioner sought discretionary review of the matter by the California Supreme Court, but review was denied on August 29, 1991.

4. Korean immigrants to Los Angeles founded the Korean United Presbyterian Church in 1906, and they established their church at its present location in 1936. The property at issue consists of seven contiguous parcels acquired over many years to meet the needs of the growing congregation. The first two lots were acquired in 1936 and 1937, before the Korean Church was unincorporated. Because the unincorporated congregation could not

acquire the property in its own name, the lots were held in the name of the Presbytery.

Five additional lots were acquired in the 1970's, and all were acquired and held in the name of the Korean Church. In 1983, the Korean Church sought financing from the Presbyterian Church (U.S.A.) to build a new sanctuary. At the insistence of the Presbytery, it granted the additional lots to the Presbytery in order to receive the financing. It was *always* the intention of the parties (as the court below found) that all the property, including the 1936, 1937 and 1970's lots, was to be reconveyed to the Korean Church once the loans were paid, and that the deeding of property to the Presbytery (as well as its continued retention of the earlier deeds) was in the nature of a mortgage. In 1982, the Korean Church decided to embark on a new building program. It borrowed \$200,000 from the Synod and the General Assembly of the Presbyterian Church, U.S.A., and the property at issue was deeded to the church as security for the loan.

In 1988, the Korean United Presbyterian Church received a tentative commitment to refinance the still outstanding, \$200,000 loan, from a local Korean bank. The Presbytery contended that it had the authority to withhold approval of the new loan, even though the loan the Presbytery had made would have been repaid in full. The dispute underlying this suit followed the refusal of the Presbytery to permit the refinancing.

The Presbyterian Church (U.S.A.) is a hierarchical church, the result of the reunion in 1983 of two Presbyterian denominations separated by the Civil War. Before 1983, the Korean Presbyterian Church was affiliated with

the United Presbyterian Church in the United States of America. Although it began as an unincorporated association, the Korean Church was in 1945 separately incorporated as a California non-profit corporation. The religious life of the Korean Church was the responsibility of a council of elders and deacons called a "session," but the corporate management fell both to the session and to other corporate bodies, including both the board of trustees and the membership of the corporation, composed of the congregants.

The Presbytery of the Pacific was the next step in the hierarchy order above the session of the Korean Church. The Presbytery of the Pacific and all higher Presbyterian hierarchical entities are organized according to the Constitution of the parent church, which consists of the Book of Confessions and the Book of Order. Much of the Book of Order concerns the religious relationship between the parent church and its congregations, and no doubt it expresses the intention of the church hierarchy to retain ultimate control over the congregations, their affairs and their property.¹

¹ The defendant relied on provisions of the Book of Order to the effect that regardless of the technicalities of title, all property of the congregations is held in trust for use and benefit of the Presbyterian Church (U.S.A.). Other provisions dictate that upon cessation of use of property by a church, the future of the property shall be at the direction of the Presbyterian Church (U.S.A.), and that, in the event of a schism,

the Presbytery shall determine if one of the factions is entitled to the property because it is identified by

(Continued on following page)

From a secular point of view, however, the Book of Order must co-exist with the articles and bylaws of each individual congregation, and the Court of Appeal opinion short-changes the congregational documents. If it was the intention in creating the non-profit corporation that assets revert to the parent denomination upon revocation of the charter by the parent church, the articles certainly could have so required. Nothing in the by-laws or articles suggests such an intent. Instead, the Presbytery relied on general promises of fealty to doctrine and general statements of authority as a basis for a trust.²

Moreover, whatever impact the current version of the Book of Order may have on newly formed congregations, the relationship between the parent body and the congregations that existed before the reunion of the two branches of Presbyterianism must also be considered in applying neutral principles. The evidence below was clear that an overwhelming majority of the members of the non-profit corporation constituting the Korean Church voted to change their affiliation and to retain ownership of their property. The provisions of the Book

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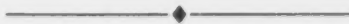
the presbytery as the true church with the Presbyterian Church (U.S.A.). This determination does not depend upon which faction received the majority vote within the particular church at the time of the schism.

² See slip op. at 12, 13 (article six, "that this corporation shall be at all times subject and adhere to the doctrines and discipline of Presbyterian Church. . . ."; by-law article 62, "As a general rule, any matter not provided for in these by-laws shall be determined in accordance with the Book of Order").

of Order relied upon by the Presbytery to frustrate that vote were created after the property at issue was acquired, and there was no evidence to suggest that the property was acquired subject to express trust provisions. Indeed, the very Book of Order upon which the respondent Presbytery so heavily relies provides that the property holding provisions may be disavowed by any congregation not previously subject to them:

The provisions of this chapter shall apply to all particular churches of the Presbyterian Church, U.S.A., except that any church which was not subject to a similar provision of the Constitution of the Church of which it was a part, prior to the reunion of the Presbyterian Church in the United States and the United Presbyterian Church in the United States of America to form the Presbyterian Church (U.S.A.), shall be excused from the provisions if the congregation shall within a period of eight (8) years following the establishment of the Presbyterian Church (U.S.A.) vote to be exempt from such provision in a regularly called meeting and shall thereafter notify the Presbytery of which it is a constituent church of such vote. The particular church voting to be so exempt shall hold title to its property and exercise its privileges of incorporation and property ownership under the provisions of the Constitution to which it was subject immediately prior to the establishment of the Presbyterian Church (U.S.A.). This paragraph may not be amended.

Book of Order § G:8.0701. The Korean Church was, in fact, one of the congregations that could (and did), by democratic vote, exempt itself from whatever force the trust provisions of the Book of Order might carry.



REASONS FOR GRANTING THE WRIT

1. ALTHOUGH THE COURT, IN *JONES V. WOLF*, APPROVED THE USE OF "NEUTRAL PRINCIPLES" IN RESOLVING CHURCH PROPERTY DISPUTES, THE CONSTITUTIONAL LIMITATIONS WITHIN WHICH STATES MAY RESOLVE SUCH CONTROVERSIES ARE NOT SUFFICIENTLY CLEAR. THE UNCERTAINTY HAS, AS IN THE PRESENT CASE, LEFT STATE COURTS WITHOUT A COHERENT BASIS FOR WEIGHING CONFLICTING ESTABLISHMENT AND FREE EXERCISE CLAUSE CLAIMS IN CHURCH PROPERTY DISPUTES, AND HAS INVITED THEM TO INTERVENE IN ISSUES OF CHURCH POLITY AND BELIEF.

In a series of cases culminating in *Jones v. Wolf*, 443 U.S. 595 (1979), the Court has given guidance to the states about resolving religious property disputes. Recognizing that the states have "an obvious and legitimate interest in the peaceful resolution of property disputes, and in providing a civil forum where the ownership of church property can be determined conclusively," *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 445 (1969) [hereinafter cited as *Hull Church*], the Court has offered states at least three alternatives for resolving such controversies.

One approach is that taken in *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1872). Asked to find an implied trust over a local church's property in favor of a national Presbyterian body, the Supreme Court refused. Following *Watson*, a state would enforce property decisions made within a church of congregational piety "by a majority of

its members or by such other local organism as it may have instituted for the purpose of ecclesiastical government," 80 U.S. at 724, and within a "church of hierarchical polity by the highest authority that has ruled on the dispute at issue, unless 'express terms' in the 'instrument by which the property is held' condition the property's use or control in a specified manner." *Maryland & Va. Eldership of the Churches of God v. Church of God*, 396 U.S. 367, 369 (1970) (Brennan, J., concurring) [hereinafter cited as *Church of God*] (quoting *Watson v. Jones*, 80 U.S. at 722). In theory, the *Watson* approach insulates state courts from deciding ecclesiastical questions by requiring them to defer to the governing body of the church.

The difficulty with deference to the highest ruling body is evident in the present case, where petitioner and respondent disagree about which entity has power to control the property, and disagree even as to the identity of the relevant entities. "To permit civil courts to probe deeply enough into the allocation of power within a church so as to decide where religious law places control over the use of church property would violate the First Amendment in much the same manner as civil determination of religious doctrine." *Church of God*, 396 U.S. at 369.

Another approach that has been identified by the Court is "the passage of special statutes governing church property arrangements in a manner that precludes state interference in doctrine. Such statutes must be carefully drawn to leave control of ecclesiastical polity, as well as doctrine, to church governing bodies." *Id.* at 370. The statutory approach might be constitutionally preferable, because each state could give specific directions to

churches about how they could effectively create a desired property arrangement. Courts confronted with a subsequent dispute could simply look to see if the statutory requirements had been satisfied, a relatively objective determination that should not require inquiry into church polity, governance or doctrine.³

"[N]eutral principles of law, developed for use in all property disputes," *Hull Church*, 393 U.S. at 449, is the third approach suggested by the Court, and that purportedly followed in the present case. Precisely what these

³ California law includes provisions regulating trusts in religious property. Cal. Corp. Code § 9142(c) (West 1991) creates a presumption against a trust in favor of a parent church, requiring certain minimum conditions.

(c) No assets of a religious corporation are or shall be deemed to be impressed with any trust, express or implied, statutory or common law unless one of the following applies:

(1) Unless, and only to the extent that, the assets were received by the corporation with an express commitment by resolution of its board of directors to so hold those assets in trust.

(2) Unless, and only to the extent that, the articles or bylaws of the corporation, or the governing instruments of a superior religious body of general church of which the corporation is a member, so expressly provide.

(3) Unless, and only to the extent that, the donor expressly imposed a trust, in writing, at the time of the gift or donation.

Corporations Code § 9142(c) (West 1991). The relationship between this statute and common-law rules for deciding property disputes is a matter of state law that was, unfortunately, left unresolved below.

"neutral principles" might be was not described in *Hull Church* and, although passing reference was made to something like neutral principles in *Serbian Eastern Orthodox Diocese for the United States and Canada v. Milivojevich*, 426 U.S. 696, 723 n. 15 (1976), no specific guidance was given about how a neutral principles determination might proceed.

The most extensive discussion of the neutral principles analysis before *Jones v. Wolf* was contained in *Church of God*. There, however, the Court discussed only the "formal title" doctrine, under which the state court is permitted to examine *only* secular documents such as deeds, reverter clauses, and general state corporation laws. See *Church of God*, 396 U.S. 282.

With *Jones v. Wolf*, the Court at once broadened the inquiry state courts could make to include such problematical documents as the parent and local churches' organizational documents, see *Jones v. Wolf*, 443 U.S. at 603, and also imposed the requirement that the documents be examined in "purely secular terms." *Id.* at 604. A court will not defer to a church's internal adjudication of issues related to the ownership of property unless it cannot otherwise resolve ownership issues. Only then, to the extent that a dispute cannot be resolved without reference to "issues of religious doctrine or polity," must a court defer to religious bodies. *Id.* at 602.

The Court found clear advantages to the neutral-principles approach.

The primary advantages of the neutral-principles approach are that it is completely secular in

operation, and yet flexible enough to accommodate all forms of religious organization and polity. The method relies exclusively on well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, piety and practice. Furthermore, the neutral principles analysis shares the peculiar genius of private-law systems in general – flexibility in ordering private rights and obligations to reflect the intentions of the parties. Through appropriate reversionary clauses and trust provisions, religious societies can specify what is to happen to church property in the event of a particular contingency, or what religious body will determine the ownership in the event of a schism or doctrinal controversy. In this manner, a religious organization can ensure that a dispute over the ownership of property will be resolved in accord with the desires of the members.

Jones v. Wolf, 443 U.S. at 603-604. Many states have taken the cue from *Jones v. Wolf* and adopted neutral principles as a basis for resolving property disputes. See, e.g. *Fonken v. Community Church*, 339 N.W.2d 810 (Iowa 1983); *Babcock Memorial Church v. Presbytery of Baltimore*, 296 Md. 573, 464 A.2d 1008 (1983); *First Presbyterian Church v. United Presbyterian Church*, 62 N.Y.2d 110, 476 N.Y.S.2d 86 (1984); *Foss v. Dykstra*, 342 N.W.2d 220 (S.D. 1983).⁴

⁴ As the four cited cases demonstrate, the application of neutral principles does not necessarily lead to consistent results. Two of the cases found a trust in favor of the Presbyterian church hierarchy and two found for the local church against claims of express or implied trust.

The disagreement over refinancing that ultimately gave rise to this case was, as disputes within a religious organization go, on the secular end of the scale. It would seem that, if the application of neutral principles are a constitutionally acceptable means to resolve such conflicts, this one should have been amenable to resolution by a civil court. Here, however, the California Court of Appeal became enmeshed in resolving conflicting beliefs respecting authority within the Presbyterian Church in violation of the Establishment Clause of the First Amendment, primarily because the kinds of inquiries allowed under the neutral principles approach are not so easily compartmentalized as the Court might have wished. Because there was a conflict within the Korean Church itself, as well as a disagreement between the local and general church, the determination below was ultimately the "official . . . preference" of one religious entity over another "that the Framers of the First Amendment forbade." *Larson v. Valente*, 456 U.S. 228, 255 (1982).

Instead of conducting a thorough examination of the doctrine-neutral materials to determine whether the Korean Church owned the property, it accepted at the outset and without question the Presbytery's designation of the minority faction as the "true" church. Empowered by what it apparently believed *Jones v. Wolf* permitted, the court of appeal looked *first* to the organizational documents of the Presbyterian Church and gave conclusive preference to selected portions of the religious documents over and above the statutorily created power of the members of a non-profit corporation to govern the affairs of that corporation.

Reading selectively from the amorphous provisions of the articles and by-laws, and assuming without legal justification that the newly revised Book of Order had been incorporated wholesale into the Korean Church's corporate structure, the court below stripped from the overwhelming majority of the Korean congregation the power to conduct the affairs of their non-profit corporation.

2. THE CALIFORNIA COURT OF APPEAL, WHILE PURPORTING TO APPLY NEUTRAL PRINCIPLES, IN FACT DEFERRED TO HIERARCHICAL AUTHORITY. AS A RESULT, PETITIONER'S RIGHT TO FREE EXERCISE OF RELIGION WAS INFRINGED.

The government may not, without violating the free exercise clause, "lend its power to one or the other side in controversies over religious authority or dogma." *Oregon Dep't of Human Resources v. Smith*, 110 S.Ct. 1595, 1599 (1990). In the present case, the court of appeal gave uncritical deference to the respondent to the detriment of petitioner, in clear contravention of the constitutional principle of religious neutrality. By stripping petitioner of its church property, the court of appeal has effectively prevented petitioner and its members from continuing their religious worship.

3. BY DEFERRING TO HIERARCHICAL AUTHORITY UNDER THE GUISE OF APPLYING NEUTRAL PRINCIPLES, THE COURT OF APPEAL BECAME IMPERMISSIBLY ENTANGLED IN PETITIONER'S AFFAIRS, IN VIOLATION OF THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT.

The trial court properly declined to consider the religious conflicts between petitioner and respondent, once it

had determined that the secular instruments concerning the ownership of the property favored the petitioner. The court of appeal, by contrast, examined and interpreted the underlying religious organizational documents, arriving at its own conclusion based on *religious* grounds before examining all the evidence.

Indeed, the court of appeal engaged in what may properly be characterized as "an excessive governmental entanglement with religion." *Lemon v. Kurtzman*, 403 U.S. 602, 613 (1971) (quoting *Walz v. Tax Comm'n*, 397 U.S. 664, 674 (1970)). The court below seized upon the opportunity to examine religious documents, and to embrace those portions that supported the Presbytery against the Korean Church.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

(Filed Dec. 1, 1988)

KOREAN UNITED	)	No. <u>0706927</u>
PRESBYTERIAN CHURCH	)	COMPLAINT
OF LOS ANGELES, A	)	FOR
California non-profit)	
corporation,	)	1. Quiet Title
Plaintiff,	)	2. Declaratory
	)	Relief
vs.	)	3. Fraud
	)	4. Fraud
PRESBYTERY OF THE PACIFIC,	)	5. Violation of
a California non-profit	)	Civil Rights-
corporation, SYNOD OF	)	Racial
SOUTHERN CALIFORNIA and	)	Discrimina-
HAWAII, A religious corporation,	)	tion
THE UNITED PRESBYTERIAN	)	6. RICO Fraud
CHURCH OF THE UNITED	)	and
STATES aka PRESBYTERIAN	)	Conspiracy
CHURCH (USA), A corporation;	)	7. Injunction
and all other persons unknown,)	
claiming any right, title, estate,)	
lien or interest in the real)	
property described in the)	
complaint adverse to any of)	
Plaintiff's ownership, or)	
any cloud on)	

Plaintiff's title thereto, and)
DOES 1 through 200, inclusive,)
Defendants.)
_____)

Plaintiff alleges:

FIRST CAUSE OF ACTION

(Quiet Title to Real Property
Against All Defendants)

1. Plaintiff KOREAN UNITED PRESBYTERIAN CHURCH OF LOS ANGELES, is a California non-profit corporation, organized and existing as a religious organization by virtue of the laws of the State of California. Plaintiff is the owner of the real property which is the subject of this action commonly known as 1374 West Jefferson Boulevard, Los Angeles, California, more specifically described in Exhibit "1" attached hereto.

2. Defendant PRESBYTERY OF THE PACIFIC is a non-profit corporation, organized and existing by virtue of the laws of the State of California. Plaintiff is informed and believes and therefore alleges that each Defendant claims to have power and authority over Plaintiff in the fields of religious doctrine and discipline.

3. Plaintiff is informed and believes and therefore alleges that Defendant SYNOD OF SOUTHERN CALIFORNIA AND HAWAII is also a religious society or organization organized and existing by virtue of the laws of the State of California and claims to hold power and authority over Plaintiff in the matters of religious practice and discipline.

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4. Defendant UNITED PRESBYTERIAN CHURCH OF THE UNITED STATES aka PRESBYTERIAN CHURCH (USA) is a religious organization organized and existing by virtue of the laws of one or more of the States of the United States and purports to hold power and authority over Plaintiff and all other Presbyterian churches of the United States with regard to religious doctrine and discipline.

5. Plaintiff is not aware of the true names or capacities of Defendants DOES 1 through 20, inclusive, and therefore sues them by such fictitious names. Plaintiff will amend this complaint to show the true names and capacities when the same become known. Plaintiff is informed and believes and therefore alleges that each fictitiously named defendant in some manner claimed some interest in the real property which is the subject of this complaint or claims some power and authority over Plaintiff in the matters of religious doctrine and discipline.

6. The Korean immigration to the United States began in 1903 through the Hawaiian Sugar Planters' Association, when CHARLES R. BISHOP, the President of the Hawaiian sugar [sic] Planter's Association requested the Korean government to send workers for their harvest, [sic] Very soon Koreans migrated to several other parts of America, including California. In 1906, the first Korean church was organized in Los Angeles. It is now known as the KOREAN UNITED PRESBYTERIAN CHURCH OF LOS ANGELES.

7. On March 22, 1936, the Directors of the Plaintiff Church voted to move to a new location and build a new

App. 4

church at 1374 W. Jefferson Boulevard, Los Angeles, California. On May 4, 1938 at 3:00 p.m., the ground breaking ceremony was held and the first Korean built Church was erected.

8. On September 19, 1975, REV. SANG BUM WOO was received into the KOREAN UNITED PRESBYTERIAN CHURCH as the fifth senior Pastor. Under the leadership of the REV. WOO the Korean Church began the study of building a new sanctuary and the use of the old sanctuary as an educational building. In 1982, the building project began and was completed in January 29, 1984. in [sic] 1988 the church celebrates its 82nd birthday.

9. The KOREAN UNITED PRESBYTERIAN CHURCH is certainly a historic and mother church to all Korean Churches in the United States of America. The KOREAN UNITED PRESBYTERIAN CHURCH has helped countless number of other churches to be established, helped in many foreign mission projects, visiting orphanages in Mexico, sponsoring many scholarship projects and many projects to benefit the Korean communities and also the local city community.

10. At all times herein enumerated, Defendants knew that the knew that the [sic] congregation of Plaintiff church was in the vast majority able only to understand the Korean language. All services, congregational and Board meetings of Plaintiff have all been conducted in the Korean language, none in English.

11. In spite of said knowledge by the Defendants, and each of them, at no time have Defendants ever presented to the Plaintiff Church any documents or memorandums in the Korean language, nor advised Plaintiff

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that the Defendants assert an expouress [sic] trust over all property of the Plaintiff.

12. Plaintiff is the sole owner of fee simple title in certain real property commonly known as 1374 West Jefferson Boulevard, Los Angeles, consisting of various parcels of land joined together including improvements thereon, more particularly described as set forth in Exhibit "1" attached hereto.

13. On or about July 14, 1983, Parcels 3 and 4 of the property were purportedly deeded by Plaintiff to Defendant PRESBYTERY OF THE PACIFIC by a deed signed by persons purportedly on behalf of Plaintiff but having no authority to do so.

14. Defendants PRESBYTERY OF THE PACIFIC and SYNOD OF SOUTHERN CALIFORNIA and HAWAII for themselves and on behalf of the UNITED PRESBYTERIAN CHURCH OF THE UNITED STATES aka PRESBYTERIAN CHURCH (USA) claimed to and purported to have title to the real property described in Exhibit "1" by virtue of their positions and by virtue of the above-referenced unauthorized deed among other things.

15. Plaintiff has been seized and possessed of the described property for a period longer than five years prior to the commencement of this action, paid all real property taxes, assessed against the property, and have held themselves out to the world as the legal and equitable owners of the property and have utilized it continuously and uninterruptedly as the owners thereof

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16. Plaintiff is seeking to quiet title against the claims of Defendants as to the grant deed being document 83-1172743 of the Official Records of Los Angeles County, California recorded October 5, 1987 purporting to transfer title from Plaintiff as to Parcels 3 and 4 to Defendant PRESBYTERY OF THE PACIFIC, as well as any other deeds executed by or in favor of any other Defendants. Defendants' claims are without any right whatsoever and said Defendants have no right, title, estate, lien or interest whatever in the within described property or any part thereof.

17. The Defendants herein named as "all persons unknown claiming any legal or equitable right, title, estate, lien or interest in the property described in the complaint adverse to Plaintiff's title, or any cloud on Plaintiff's title thereto, and otherwise named as DOES 1 through 200, inclusive", are all unknown to Plaintiff. Said Defendants, and each of them, claim some right, title, [sic] estate, lien or interest in the above described property adverse to Plaintiff's title and such claim or claims constitute a cloud on Plaintiff's title thereto. Such claim or claims are without any right whatever and these Defendants have no right, title [sic] estate, lien or interest whatever in the above-described property or any part thereof.

18. Plaintiff seeks to quiet title as of the date it first acquired title as KOREAN PRESBYTERIAN CHURCH OF LOS ANGELES in that Plaintiff has continuously been the true title owner since said dates and the defendants may claim some right, title, or interest by virtue of deed or otherwise during said period.

SECOND CAUSE OF ACTION

(Declaratory Relief Against Defendant PRESBYTERY OF THE PACIFIC, SYNOD OF SOUTHERN CALIFORNIA and HAWAII AND THE UNITED PRESBYTERIAN CHURCH OF THE UNITED STATES aka PRESBYTERIAN CHURCH (USA))

19. Plaintiff repeats and realleges each and every allegation contained in the First Cause of Action and by this reference incorporates them herein as though fully set forth.

20. In connection with the power and authority given to the UNITED PRESBYTERIAN CHURCH OF THE UNITED STATES aka PRESBYTERIAN CHURCH (USA) and through it to Defendant PRESBYTERY OF THE PACIFIC, SYNOD OF SOUTHERN CALIFORNIA and HAWAII, Defendants, and each of them purport to guide and direct Plaintiff and administer discipline in accordance with the Book of Order but has also attempted to assert other functions not concerned with religious doctrine and discipline.

21. An actual controversy has arisen and now exists between Plaintiff and Defendants, and each of them, concerning their respective rights and duties in that Plaintiff contends that Defendants have failed to follow their own proper procedures relating to the discipline over leaders of Plaintiff Church and that the Defendants have attempted, in connection with the assertion of discipline to gain for itself title to the real property belonging to Plaintiff. Defendant disputes these contentions and contends that it has a right to act as it has. Attached hereto and marked as Exhibit "2" is a memorandum outlining

the position of Defendant PRESBYTERY OF THE PACIFIC.

22. Plaintiff desires a judicial determination of its rights and duties.

23. A judicial declaration is necessary and appropriate at this time under the circumstances in order that Plaintiff may ascertain its rights and duties and that the congregation of Plaintiff may be free to worship without the threat of financial hardship and confiscation of its property.

24. As a direct and proximate result of the controversy and of Defendant's actions herein set forth, Plaintiff has been damaged in a sum in excess of the minimum jurisdictional limits of this court according to proof.

THIRD CAUSE OF ACTION

(Fraud Against All Defendants)

25. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 24 above set forth, and by this reference incorporates them herein, as though fully set forth.

26. In an [sic] about 1983, Plaintiff sought to borrow money from various financial institutions for the purpose of instruction and improvements upon the real property described above.

27. In an [sic] about June and July 1983, Defendants, and each of them, represented to Plaintiffs that in order to borrow from financial institutions it would be required that the loan be taken out in the name of the Defendants,

and for that purpose Plaintiff would be required to sign a deed of trust in favor of Defendants. Defendants presented to Plaintiff's representatives the documents required to be signed, representing them to be a deed of trust for the sum which had been borrowed by Plaintiff.

28. The representations made by Defendants were untrue and known by the Defendants to be untrue when they made them. The document which Defendants presented to Plaintiff was in fact not a deed of trust but a quitclaim deed to all of the property. This was unknown to Plaintiff in that Plaintiff had no legal representation in that all of the documents prepared on their behalf were prepared by counsel for Defendants, and because of the peculiar situation of trust and confidence which Plaintiff reposed in Defendants, Plaintiff signed the documents presented to them.

29. Plaintiff had no intention of deeding the property to Defendants as Plaintiff had been in existence since 1906 and had acquired the property over the years by contributions of its members.

30. As a direct and proximate result of the fraud and deceit of the Defendants, and each of them, Plaintiff have [sic] been damaged by potential loss of their property which they had paid for over many years and have been required to seek representation of counsel to obtain their property back for them.

31. Plaintiff is informed and believes and therefore alleges that as a result of the fraud and-deceit of the Defendants, and each of them, it has been damaged in a sum in excess of the minimum jurisdictional limits of this court according to proof.

32. By reason of the wilful and consciously oppressive acts of Defendants and each of them, Plaintiff is entitled to punitive and exemplary damages in a sum according to proof.

FOURTH CAUSE OF ACTION

(Fraud-Against All Defendants)

33. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 32, above set forth and by this reference incorporates them herein as though fully set forth.

34. Commencing in approximately 1906, Plaintiff became affiliated with Defendants for the purposes of joining the greater group for the purpose of worship of JESUS CHRIST and ALMIGHTY GOD. Plaintiff was guided by the trust and confidence it reposed in Defendants and the principals set forth in the Book of Order purporting to embody the Christian ethic of Love Thy Neighbor.

35. Commencing in approximately 1906, members of the Plaintiff's church, in addition to acquiring the property for the Church, doing internal good works and worship, pledged and paid to Defendants sums of money to support the administrative bodies of Defendants.

36. Such payments were made with the belief that Plaintiff was respected and held in esteem as an independent body in accordance with the Book of Order and that Plaintiff owned its own property and was treated as an equal among equals.

37. Unknown to Plaintiff, but well known to Defendants, Defendants accepted such donations from Plaintiff with the reserved intent that Defendants in fact owned the property of the Church and were entitled to exercise powers over the pastor, the moderator, the elders and other officials within Plaintiff's Church.

38. Based upon the representations made by Defendants, and each of them, Plaintiff regularly signed whatever documents were required of them by Defendants, including the quitclaim deed which they believed to be the deed of trust and submitted to the discipline and authority of Defendant Church.

39. Plaintiff did not discover the true facts relating to the quitclaim deed which they believed was merely a deed of trust until approximately 1988.

40. In addition, Plaintiff did not discover the true intent of the Defendants with respect to the authority over their church group until approximately 1988 when Defendants attempted to exert supreme authority over the pastors, elders, and other members of Plaintiff Church.

41. Had Plaintiff known of the true intentions of Defendants it would not have made contributions for many years to Defendants in order to support the administrative bodies now attempting to destroy them.

42. As a direct and proximate result of the fraud and deceit of the Defendants, and each of them, Plaintiff has been damaged in a sum in excess of the minimum jurisdictional limits of this court, according to proof.

43. Defendants claim that Plaintiff has no right to obtain counsel of its choice but must obtain counsel who is a member of the PRESBYTERIAN CHURCH (USA). Such requirement is confiscatory and deprives Plaintiff of due process.

44. By reason of the wilful and consciously oppressive acts of the Defendants and each of them, Plaintiff is entitled to a [sic] punitive and exemplary damages in a sum according to proof.

FIFTH CAUSE OF ACTION

(Violation of Civil Rights-Racial Discrimination Against All Defendants)

45. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 44, above set forth and by this reference incorporates them herein as though fully set forth.

46. Plaintiff Church is made up of a majority of Koreans a separate and distinct race and nationality.

47. A majority, if not entirely all of the persons exercising power within the governing bodies of Defendants are of the Anglo-Saxon and white races and nationalities.

48. The KOREAN CHURCH is within the Defendant Bodies and makes up approximately 10% of the membership of Defendants.

49. No members of the Korean race or nationality are members of any Boards exercising any power with Defendants. Commencing at least in 1983, Defendants,

and each of them, have followed a calculated course conspiring to discriminate against Plaintiff by reason of its racial and national make up in attempting to deprive them of their property and of their autonomous power over their Church. In this regard, Defendants have attempted to remove the pastor of Plaintiff Church, have attempted to send Anglo-Saxon whites to exercise power over Plaintiff church and have attempted to usurp their rights in the property and method of worship to themselves, all to Plaintiff's damage in a sum in excess of the minimal jurisdictional limits of this court.

50. Defendants claim that Plaintiff has no right to obtain counsel of its choice but must obtain counsel who is a member of the PRESBYTERIAN CHURCH (USA). Such requirement is confiscatory and deprives Plaintiff of due process.

51. By reason of the wilful and consciously oppressive acts of the Defendants, and each of them, Plaintiff is entitled to punitive and exemplary damages in a sum according to proof.

SIXTH CAUSE OF ACTION

(RICO-Fraud and Conspiracy Against All Defendants)

51. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 50 above set forth, and by this reference incorporates them herein as though fully set forth.

52. In doing the acts above set forth, Defendants, and each of them, have conspired together to deprive Plaintiff of its rights and property, to exert control over

the Plaintiff body and to wrest the property of Plaintiff from its control and have done all of these acts by means of telephonic communication and use of the United States mails and other means.

53. Defendants engaged in this pattern of racketeering for the purpose of depriving Plaintiffs of their valuable property, their right of free exercise of religion and free choice and for the enhancement of their own power and financial well being, all to Plaintiff's damage in a sum in excess of the minimum jurisdictional limits of this court, according to proof.

54. Defendants claim that Plaintiff has no right to obtain counsel of its choice but must obtain counsel who is a member of the PRESBYTERIAN CHURCH (USA). Such requirement is confiscatory and deprives Plaintiff of due process.

55. By reason of the wilful and consciously oppressive acts of the Defendants and each of them, Plaintiff is entitled to punitive and exemplary damages in a sum according to proof.

SEVENTH CAUSE OF ACTION

(Injunction Against All Defendants)

56. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 55 above set forth, and [sic] by this reference incorporate them herein as though fully set forth.

57. Chapter VIII of the Book of Order of the PRESBYTERIAN CHURCH (USA) provides that church property held by a particular church shall be held in trust for

the benefit of PRESBYTERIAN CHURCH (USA) except that the provisions of the Chapter do not apply to any church which was not the subject to a similar provision of the Constitution of the church of which it was a part, prior to the reunion of the PRESBYTERIAN CHURCH in the United States and the UNITED PRESBYTERIAN CHURCH in the United States of America to form the PRESBYTERIAN CHURCH (USA) and that such church shall be excused from the provisions of the chapter if the congregation shall, within a period of eight years following the establishment of the PRESBYTERIAN CHURCH (USA) vote to be exempt from such provision in a regularly called meeting and shall thereafter notify the PRESBYTERY of which it is a constituent church of such vote.

57. The reunion of the PRESBYTERIAN CHURCH in the United States and the UNITED PRESBYTERIAN CHURCH in the United States of America to form the PRESBYTERIAN CHURCH (USA) took place in 1983.

58. Plaintiff Church was not subject to a similar provision of this Chapter prior to 1983 and, in a vote of the membership of the Church, the members voted to be exempt from said provisions and voted to hold title to its property and to remove themselves from the authority of the PRESBYTERIAN CHURCH (USA) and the other constituent bodies of Defendants.

59. Plaintiff has offered to obtain other financing for the real property which was the subject of the loan in 1983 and which they intended to sign a trust deed in favor of Defendants but instead were presented with a quitclaim deed to sign. Plaintiff has entered into an escrow and offered to make such repayment through said

escrow, but Defendants have failed and refused to do so and have failed and refused to deed the property above described back to Plaintiff, in violation of their own Articles of Incorporation and in violation of the trust conferred upon them.

WHEREFORE, Plaintiff prays judgment as follows:

FOR THE FIRST CAUSE OF ACTION:

1. For a judgment that Plaintiff is the owner and fee simple of the property and that Defendants have no interest in the property adverse to Plaintiff's;

FOR THE SECOND CAUSE OF ACTION:

2. For a declaration that Defendants' actions as outlined in the letter of March 31, 1988 attached hereto is contrary to the power and authority held by Defendants and therefore are void and of no force and effect;

FOR THE THIRD CAUSE OF ACTION:

3. For damages for fraud and deceit in a sum in excess of the minimum jurisdictional limits of this court according to proof;

4. For punitive and exemplary damages according to proof;

FOR THE FOURTH CAUSE OF ACTION:

5. For damages for fraud and deceit in a sum in excess of the minimum jurisdictional limits of this court according to proof;

6. For punitive and exemplary damages according to proof;

FOR THE FIFTH CAUSE OF ACTION:

7. For damages for violation of Civil Rights in a sum in excess of the minimum jurisdictional limits of this court according to proof;

8. For punitive and exemplary damages according to proof;

FOR THE SIXTH CAUSE OF ACTION:

9. For damages in a sum in excess of the minimum jurisdictional limits of this court according to proof;

10. For punitive and exemplary damages according to proof;

FOR THE SEVENTH CAUSE OF ACTION:

11. For a preliminary and permanent injunction compelling Defendants, and Each of them, to transfer and distribute the property described herein to Plaintiff;

FOR ALL CAUSES OF ACTION:

12. For costs of suit incurred herein; and

13. For such other and further relief as the court deems just.

MASRY & VITITOE

By /s/ Edward L. Masry
EDWARD L. MASRY

Attorneys for Plaintiff

EXHIBIT 1

Parcel 1:

Lot 6 and the East 8 feet of Lot 5 of the Schofield Tract, in the City of Los Angeles, in the County of Los Angeles, State of California, as per Map recorded in Book 4, Page 24 of Maps, in the Office of the County Recorder of said County.

Parcel 2:

The East 40 feet of the West 42 feet of Lot 5 of the Schofield Tract, in the City of Los Angeles, in the County of Los Angeles, State of California, as per Map recorded in Book 4, Page 24 of Maps, in the Office of the County Recorder of said County.

Parcel 3:

Lot 3 of Hoffman Tract, in the City of Los Angeles, in the County of Los Angeles, State of California, as per Map recorded in Book 6, Page 13 of Maps, in the Office of the County Recorder of said County.

Parcel 4:

Lot 4 of the Hoffman Tract, in the City of Los Angeles, in the County of Los Angeles, State of California, as per Map recorded in Book 6, Page 13 of Maps, in the Office of the County Recorder of said County.

Parcel 5:

Lot 13 in Block 8 of the Howes Tract, in the City of Los Angeles, County of Los Angeles, State of California as per map recorded in Book 16, Page 60 of Miscellaneous

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Records in the Office of the County Recorder of said County.

Parcel 6:

Lots 5 and 6 of the Hoffman Tract, as-per map recorded in Book 6, Page 13 of Maps in the Office of the County Recorder of said County.

Parcel 7:

The North 26 feet of Lot 10 of the Hoffman Tract, as per map recorded in Book 6, Page 13 of Maps, in the Office of the County Recorder of said County.

Except the Portion conveyed to the City of Los Angeles for street purposes.

Beverly
Hills
Presbyterian
Church

James H. Morrison
Pastor
Nick Stirmpie
Minister of Music

March 31, 1988

As a body, the Commission is agreed that we will recommend to the Presbytery (1) that Pastor Woo be removed as Pastor of the Korean United Presbyterian Church and (2) that the congregation of the Korean Presbyterian Church be dissolved (dismissed) from the Presbyterian Church (USA). It is our judgment that the majority of the Korean United Presbyterian Church have no real desire to be a part of the Presbyterian Church

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(USA). If the Presbytery approves the above recommendation of the Commission, the dismissed congregation would no longer hold title to the property on Jefferson Boulevard. The title would pass to the Presbytery of the Pacific. I have no idea how the Presbytery would decide to use the property. A recommendation which members of the Commission could endorse would be for those currently in the Korean United Presbyterian Church who wish to maintain a bond with the Presbyterian Church (USA) would be allowed to form a new congregation and hold title to the property. That would exclude the present leadership of the Korean United Presbyterian Church.

Warmly,

/s/ James H. Morrison
James H. Morrison

1988년 3월 31일에 노회여사 제정문
행정 위원회가 목사님과 당회원에게
보낸 편지 중에 3번째 단에 명사문 제시
여 대한 편지.

우리 위원회에서는 다음 사항들을 경정하여 노회에게 제언하기로 하였습니다.

- 1) 우리 목사님을 나성환인 연불장르 교회목사직에서 물러나게 한다. 2) 나성환인
연불장르 교회 교인들을 해산한다. 우리회 판단으로는 나성환인인 불장르
교회 교인들 거의 대부분이 비 장르고 (U.S.A.)에 진정한 마음으로 속해 있기를
원하지 않는다. 만일 노회가 우리의 제언을 들을 경우 Jefferson Blvd. 에 있는
제삼인 노회회소유물이 된다. 그러고서 건물이 어떻게 사용될지 모른다.
그러나 노회장르 (U.S.A.)에 속한 집회평하는 교인들만 예외로 할것에 대한
한 합의는 있을 수 없다. 그러므로 제금 당회회는 해산이 된다.

00018
2
Exhibit:

EXHIBIT "2"

LATHAM & WATKINS
Robert A. Long
Dong-Gun Kim
555 South Flower Street
Los Angeles, California 90071
(213) 485-1234

Attorneys for Defendants
Presbytery of the Pacific,
Synod of Southern California
and Hawaii and Presbyterian
Church (U.S.A.)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

(Filed Jan. 5, 1989)

KOREAN UNITED	)	CASE NO. C 706927
PRESBYTERIAN CHURCH)	
OF LOS ANGELES, etc.,	)	ANSWER TO
	)	COMPLAINT BY
Plaintiff,	)	DEFENDANTS
	)	PRESBYTERY OF THE
vs.	)	PACIFIC, SYNOD OF
PRESBYTERY OF THE	)	SOUTHERN CALIFORNIA
PACIFIC, etc., et. al.,	)	AND HAWAII AND
	)	PRESBYTERIAN CHURCH
Defendants.	)	(U.S.A.)
_____)	

Defendants Presbytery of the Pacific ("Presbytery"), Synod of Southern California and Hawaii ("Synod") and Presbyterian Church (U.S.A.) ("PCUSA") answer the Complaint herein, for themselves alone, and admit, deny and allege as follows:

ANSWER TO THE ALLEGED FIRST CAUSE OF ACTION

(Quiet Title to Real Property)

1. In answer to the allegations of paragraph 1, defendants allege that plaintiff Korean United Presbyterian Church of Los Angeles ("Church corporation" is a non-profit religious corporation organized and existing by virtue of the laws of the State of California pursuant to Articles of Incorporation which provide that such corporation is and will remain a part of and at all times adhere to the doctrine and disciplines of the national denomination now known as the Presbyterian Church (U.S.A.). Plaintiff Church corporation was organized for the purpose of receiving, holding, managing and transferring the real and personal property of the unincorporated religious congregation known as the Korean United Presbyterian Church of Los Angeles, a church of the Presbyterian Church (U.S.A.). Except as so expressly alleged, defendants deny each and every allegation of paragraph 1.

2. In answer to the allegations of paragraph 2, defendants allege that defendant Presbytery is a California nonprofit religious corporation organized for the purpose of receiving, holding, managing and transferring the real and personal property of the Presbytery of the Pacific of the Presbyterian Church (U.S.A.), an unincorporated judicatory and governing body in the national denomination known as the Presbyterian Church (U.S.A.). The Korean United Presbyterian Church of Los Angeles is under the jurisdiction of the Presbytery of the Pacific of the Presbyterian Church (U.S.A.), and the plaintiff Church corporation is subject to the authority of the

Session of the Church and the provisions of the Constitution of the Presbyterian Church (U.S.A.), which includes the Book of Order setting forth the doctrine and disciplines of the Presbyterian Church (U.S.A.). Except as so expressly alleged, or as provided by the Book of Order, defendants deny each and every allegation of paragraph 2.

3. In answer to the allegations of paragraph 3, defendants allege that defendant Synod is a California nonprofit religious corporation organized for the purpose of receiving, holding, managing and transferring the real and personal property of the Synod of Southern California and Hawaii, an unincorporated judicatory and governing body in the national denomination known as the Presbyterian Church (U.S.A.). The Presbytery of the Pacific is a part of the Synod of Southern California and Hawaii. Except as so expressly alleged, or as provided by the Book of Order, defendants deny each and every allegation of paragraph 3.

4. In answer to the allegations of paragraph 4, defendants allege that defendant Presbyterian Church (U.S.A.), successor in interest to the United Presbyterian Church in the United States of America, is a national denomination of which the General Assembly of the Presbyterian Church (U.S.A.), composed of representatives of each presbytery, including the Presbytery of the Pacific, is the highest judicatory and governing body. The General Assembly has caused to be formed and maintained under the laws of the State of Pennsylvania a non-profit religious corporation known as Presbyterian Church (U.S.A.), for the purpose of receiving, holding, managing and transferring the real and personal property of the

national denomination. Except as so expressly alleged, or as provided by the Book of Order, defendants deny each and every allegation of paragraph 4.

5. Defendants have no information or belief sufficient to enable them to answer the allegations of paragraph 5, and basing their denial upon that ground, deny each and every allegation of that paragraph.

6. In answer to the allegations of paragraph 6, defendants allege that in or about 1906, the predecessor of the Presbytery of the Pacific organized for immigrant Koreans in southern California a Presbyterian congregation which became known as the Korean United Presbyterian Church of Los Angeles. Except as so expressly alleged, defendants have no information or belief sufficient to enable them to answer the allegations of paragraph 6, and basing their denial upon that ground, deny each and every allegation of that paragraph.

7. In answer to the allegations of paragraph 7, defendants allege that since 1906, the Presbytery of the Pacific or its predecessor has continuously and actively worked with the Korean United Presbyterian Church of Los Angeles in securing pastoral leadership, in planning for service and witness, in securing property for Church operations, in erecting and improving Church buildings, in counseling about organization and operations in conformity with the Book of Order and in giving other forms of support and encouragement that might strengthen the Church in the larger life of the denomination. On or about May 13, 1937, the Presbytery of the Pacific obtained legal title for the Church to real property located at 1374 W. Jefferson Boulevard, Los Angeles, California, and

thereafter secured gifts from both outside and within the Korean community and obtained financing from the national denomination for the purpose of erecting a Church building on the property. Except as so expressly alleged, defendants have no information or belief sufficient to enable them to answer the allegations of paragraph 7 of the complaint, and basing their denial upon that ground, deny each and every allegation of that paragraph.

8. In answer to the allegations of paragraph 8, defendants allege that in or about 1972, the Presbytery of the Pacific secured for the Korean United Presbyterian Church the services of Rev. Sang Bom Woo, a member of the Presbytery, to provide pastoral care and leadership on an interim basis until a permanent pastor could be called in accordance with the procedures provided by the Book of Order. On or about September 28, 1975, Rev. Sang Bom Woo was installed by the Presbytery of the Pacific as the pastor of the Korean United Presbyterian Church. In 1982, the Korean United Presbyterian Church made application with defendants Synod and PCUSA for financing of new construction on the Church property; and in 1983, the Korean United Presbyterian Church borrowed the sums of \$75,000 and \$125,000 from defendants Synod and PCUSA respectively, which sums were used for the construction of a new Church building. Except as so expressly alleged, defendants deny each and every allegation of paragraph 8.

9. Defendants admit the allegations of paragraph 9.

10. In answer to the allegations of paragraph 10, defendants admit that many members of the Korean

United Presbyterian Church of Los Angeles are fluent only in the Korean language and that services and meetings of the Church are typically conducted in the Korean language. Defendants further allege that many members and most of the leaders of the Korean United Presbyterian Church of Los Angeles are fluent also in the English language. Except as so expressly admitted and alleged, defendants deny each and every allegation of paragraph 10.

11. Defendants deny each and every allegation of paragraph 11 and allege that various elders of the Korean United Presbyterian Church and Rev. Sang Bom Woo have been members of the Presbytery of the Pacific, have attended meetings of both the Presbytery and the General Assembly, have received instruction in and are familiar with the Book of Order and are aware that the Book of Order provides that all property held by a particular church, a presbytery, a synod, the General Assembly or the Presbyterian Church (U.S.A.) is held in trust for the use and benefit of the Presbyterian Church (U.S.A.).

12. Defendants deny each and every allegation of paragraph 12 and allege that any and all right, title or interest held by the Korean United Presbyterian Church of Los Angeles in the property described in Exhibit 1 to the Complaint is held in trust for the use and benefit of the Presbyterian Church (U.S.A.).

13. In answer to the allegations of paragraph 13, defendants allege that in 1982, plaintiff Church corporation made application with defendants Synod and PCUSA for financing of construction on the Church property that plaintiff holds in trust for the use and benefit of

the Presbyterian Church (U.S.A.). In or about July, 1983, defendants Synod and PCUSA approved loans to plaintiff Church corporation of \$75,000 and \$125,000 respectively, subject to the conditions that the indebtedness be secured by deeds of trust on the Church property and that legal title to the property be held by defendant Presbytery, which had held legal title to all the Church property from 1937 to 1979. The Session of the Korean United Presbyterian Church and defendant Presbytery duly approved such terms and conditions, and on July 14, 1983, plaintiff Church corporation duly executed a corporation grant deed conveying legal title to the Church property to defendant Presbytery, which deed was signed by Edward Youngkue Jin and Kenneth Kyu Fan Cho, elders of the Church and officers of plaintiff Church corporation, and recorded in the Los Angeles County Recorder's Office on October 5, 1983. On or about July 14, 1983, defendant Presbytery, on behalf of plaintiff Church corporation, executed deeds of trust of the Church property in favor of defendants Synod and PCUSA, respectively, in order to secure repayment of their loans of \$75,000 and \$125,000, respectively, to plaintiff Church corporation. Except as so expressly alleged, defendants deny each and every allegation of paragraph 13.

14. In answer to the allegations of paragraph 14, defendants reallege and incorporate by reference paragraphs 11, 12 and 13, above, and further allege that by reason of the foregoing, defendant Presbytery holds legal title to the Church property, defendants Synod and PCUSA hold beneficial interests under deeds of trust of the Church property and whatever right, title or interest

is or may hereafter be held by the plaintiff Church corporation is held in trust for the use and benefit of the Presbyterian Church (U.S.A.). Except as so expressly alleged, defendants deny each and every allegation of paragraph 14.

15. Defendants deny each and every allegation of paragraph 15.

16. Defendants deny each and every allegation of paragraph 16.

17. Defendants have no information or belief sufficient to enable them to answer the allegations of paragraph 17, and basing their denial upon that ground, deny each and every allegation of that paragraph.

18. In answer to the allegations of paragraph 18, defendants admit that they claim legal and equitable interests in the Church property. Except as so expressly admitted, defendants deny each and every allegation of paragraph 18.

ANSWER TO ALLEGED SECOND CAUSE OF ACTION

(Declaratory Relief)

19. In answer to the allegations of paragraph 19, defendants incorporate by reference paragraphs 1 through 18, inclusive, above.

20. In answer to the allegations of paragraph 20, defendants allege that the Korean United Presbyterian Church and the plaintiff Church corporation were and are a part of and under the jurisdiction of the Presbytery of

the Pacific of the Presbyterian Church (U.S.A.) and subject to the authority and provisions of the Book of Order, which provides for the Church form of government and the manner in which Church decisions are made, reviewed and corrected; and that at all times defendants have acted fully in accordance with the provisions of the Book of Order. Except as so expressly alleged, or as provided by the Book of Order, defendants deny each and every allegation of paragraph 20.

21. In answer to the allegations of paragraph 21, defendants allege that the Korean United Presbyterian Church and the plaintiff Church corporation were and are a part of and under the jurisdiction of the Presbytery of the Pacific of the Presbyterian Church (U.S.A.) and subject to the authority and provisions of the Book of Order, which provides for the Church form of government and the manner in which Church decisions are made, reviewed and corrected; and that at all times defendants have acted fully in accordance with the provisions of the Book of Order; and that any right, title and interest of the plaintiff Church corporation in the Church property is held in trust for the use and benefit of the Presbyterian Church (U.S.A.). Defendants further allege that Exhibit 2 is a partial, redacted copy of a document prepared by an Administrative Commission for the Korean United Presbyterian Church. Except as so expressly alleged, or as provided by the Book of Order, defendants deny each and every allegation of paragraph 21.

22. Defendants deny that plaintiff is entitled to the judicial declaration of rights it seeks.

23. Defendants deny each and every allegation of paragraph 23.

24. Defendants deny each and every allegation of paragraph 24.

ANSWER TO ALLEGED THIRD CAUSE OF ACTION

(Fraud)

25. In answer to the allegations of paragraph 25, defendants incorporate by reference paragraphs 1 through 24, inclusive, above.

26. Defendants deny each and every allegation of paragraph 26.

27. In answer to the allegations of paragraph 27, defendants incorporate by reference their answer to paragraph 13, above, and except as so expressly alleged in paragraph 13, deny each and every allegation of paragraph 27.

28. Defendants deny each and every allegation of paragraph 28.

29. Defendants deny each and every allegation of paragraph 29.

30. Defendants deny each and every allegation of paragraph 30 and specifically deny that plaintiff has been damaged in any manner or sum whatsoever.

31. Defendants deny each and every allegation of paragraph 31 and specifically deny that plaintiff has been damaged in any manner or sum whatsoever.

32. Defendants deny each and every allegation of paragraph 32 and specifically deny that plaintiff has been damaged in any manner or sum whatsoever.

ANSWER TO ALLEGED FOURTH CAUSE OF ACTION

(Fraud)

33. In answer to the allegations of paragraph 33, defendants incorporate by reference paragraphs 1 through 32, inclusive, above.

34. In answer to the allegations of paragraph 34, defendants allege that in or about 1906, the predecessor of the Presbytery of the Pacific organized a Presbyterian congregation for immigrant Koreans in Southern California that became known as the Korean United Presbyterian Church of Los Angeles; and that since 1906, the Presbytery of the Pacific or its predecessor has continuously and actively worked with the Korean United Presbyterian Church in securing pastoral leadership, in planning for service, worship and witness, in securing property for Church operations, in erecting and improving Church buildings, in counseling the congregation and Session of the Church concerning organization and operations in conformity with the Book of Order and in giving other forms of support and encouragement that might strengthen the Church in the larger life of the denomination. Except as so expressly alleged, defendants deny each and every allegation of paragraph 34.

35. In answer to the allegations of paragraph 35, defendants allege that the Korean United Presbyterian Church, as a church in the Presbyterian Church (U.S.A.), has from time to time pledged and paid monies for the

support of the Presbytery of the Pacific, the Synod of Southern California and Hawaii and the General Assembly. Except as so expressly alleged, defendants deny each and every allegation of paragraph 35.

36. In answer to the allegations of paragraph 36, defendants allege that the Korean United Presbyterian Church has been a respected church of the Presbyterian Church (U.S.A.) and that it has operated under the authority and provisions of the Book of Order, which provides, among other things, that the plaintiff Church corporation holds any right, title or interest it has in the Church property in trust for the use and benefit of the Presbyterian Church (U.S.A.). Except as so expressly alleged, defendants deny each and every allegation of paragraph 36.

37. In answer to the allegations of paragraph 37, defendants allege that the respective powers and responsibilities of the Korean United Presbyterian Church, the Presbytery of the Pacific, the Synod of Southern California and Hawaii and the General Assembly are set forth in the Book of Order and that the plaintiff Church corporation expressly agreed to be subject and adhere to the doctrine and disciplines of the Presbyterian Church (U.S.A.), as set forth in the Book of Order. Except as so expressly alleged, defendants deny each and every allegation of paragraph 37.

38. In answer to the allegations of paragraph 38, defendants admit that the Korean United Presbyterian Church has submitted and agreed to the authority and discipline of the Presbytery of the Pacific, the Synod of

Southern California and Hawaii and the General Assembly, as provided by the Book of Order. Except as expressly so alleged, defendants deny each and every allegation of paragraph 38.

39. Defendants deny each and every allegation of paragraph 39.

40. Defendants deny each and every allegation of paragraph 40.

41. Defendants deny each and every allegation of paragraph 41.

42. Defendants deny each and every allegation of paragraph 42 and expressly deny that plaintiff has been damaged in any manner or sum whatsoever.

43. Defendants deny each and every allegation of paragraph 43.

44. Defendants deny each and every allegation of paragraph 44 and specifically deny that plaintiff has been damaged in any manner or sum whatsoever.

ANSWER TO ALLEGED FIFTH CAUSE OF ACTION

(Violation of Civil Rights-Racial Discrimination)

45. In answer to the allegations of paragraph 45, defendants incorporate by reference the allegations of paragraph 1 through 44, inclusive, above.

46. Defendants admit the allegations of paragraph 46.

47. Defendants deny each and every allegation of paragraph 47.

48. Defendants cannot answer specifically the allegations of paragraph 48 because such allegations are unintelligible. Basing their answer on that ground, defendants deny each and every allegation of paragraph 48.

49. Defendants deny each and every allegation of paragraph 49.

50. Defendants deny each and every allegation of paragraph 50.

51. Defendants deny each and every allegation of paragraph 51 and specifically deny that plaintiff has been damaged in any manner or sum whatsoever.

ANSWER TO ALLEGED SIXTH CAUSE OF ACTION

(RICO-Fraud and Conspiracy)

51. In answer to the allegations of the second paragraph 51, defendants incorporate by reference paragraphs 1 through 50, inclusive, above.

52. Defendants deny each and every allegation of paragraph 52.

53. Defendants deny each and every allegation of paragraph 53.

54. Defendants deny each and every allegation of paragraph 54.

55. Defendants deny each and every allegation of paragraph 55 and specifically deny that plaintiff has suffered damages in any manner or sum whatsoever.

ANSWER TO ALLEGED SEVENTH CAUSE OF ACTION

(Injunctive Relief)

56. In answer to the allegations of paragraph 56, defendants incorporate by reference paragraphs 1 through 55, inclusive, above.

57. In answer to the allegations of the first paragraph 57, defendants allege that the provisions of the Book of Order are as set forth therein and not otherwise.

57. Defendants admit the allegations of the second paragraph 57.

58. In answer to the allegations of paragraph 58, defendants allege that the Korean United Presbyterian Church of Los Angeles was subject to the authority and provisions of the Book of Order of the United Presbyterian Church in the United States of America prior to the reunion of the United Presbyterian Church in the United States of America with the Presbyterian Church in the United States to form the Presbyterian Church (U.S.A.) and that such Book of Order contained provisions virtually identical to those found in Chapter VIII of the new Book of Order of the Presbyterian Church (U.S.A.) after the reunion, including those provisions stating that property held by a particular church is held in trust for the use and benefit of the Presbyterian Church (U.S.A.). In further answer to the allegations of paragraph 58, defendants deny that there has been any valid congregational meeting or action of the Korean United Presbyterian Church to remove the church from the Presbyterian Church (U.S.A.). Except as so expressly alleged, defendants deny each and every allegation of paragraph 58.

59. Defendants deny each and every allegation of paragraph 59.

FIRST AFFIRMATIVE DEFENSE TO
ALL CAUSES OF ACTION

(Failure to State a Cause of Action)

60. The alleged causes of action, and each of them, fail to state facts sufficient to constitute a cause of action.

SECOND AFFIRMATIVE DEFENSE TO
ALL CAUSES OF ACTION

(Prior Action Pending-Abatement)

61. On August 4, 1988, plaintiff Church corporation filed in this Court Case No. C694494, a separate legal action against these same defendants alleging causes of action that are substantially the same as those alleged herein.

62. By reason of the foregoing, the within action should be stayed and abated.

THIRD AFFIRMATIVE DEFENSE TO
ALL CAUSES OF ACTION

(Property Held in Trust)

63. The Book of Order of the Presbyterian Church (U.S.A.), to which the plaintiff Church corporation has agreed to adhere and be subject, provides in Chapter VIII that "[a]ll property held by or for a particular church, a presbytery, a synod, the General Assembly, or the Presbyterian Church (U.S.A.) . . . is held in trust . . . for the use and benefit of the Presbyterian Church (U.S.A.)."

64. Any right, title or interest of plaintiff Church corporation in the Church property is held by it in trust for the benefit of the Presbyterian Church (U.S.A.) and subject to the direction and disposition of the Presbytery of the Pacific, all in accordance with Chapter VIII of the Book of Order.

65. There is a schism within the membership of the Korean United Presbyterian Church of Los Angeles, and the Presbytery of the Pacific, in accordance with the Book of Order, has identified one of the factions as the true church within the Presbyterian Church (U.S.A.) and has designated that faction as the one entitled to use the Church property for church purposes as a Korean congregation.

66. Plaintiff Church corporation is in breach of trust by, among other things, renouncing the jurisdiction and rights of the Presbytery of the Pacific, filing the complaint herein claiming exclusive right, title and interest, both legal and equitable, in the Church property without regard to the trust in favor of the Presbyterian Church (U.S.A.) and engaging in a course of conduct contrary to the governing procedures of the Book of Order.

FOURTH AFFIRMATIVE DEFENSE TO
ALL CAUSES OF ACTION

(Action of Governing Bodies of
Presbyterian Church (U.S.A.))

67. On June 8, 1986, the Presbytery of the Pacific, acting in accordance with the Book of Order, authorized and appointed an Administrative Commission for the Korean United Presbyterian Church of Los Angeles with

the power to replace the moderator of the Church Session with the chairperson of the Commission, to identify policies and practices carried out by the Church in variance with the Book of Order and to train and supervise Church elders in carrying out Church program and administration.

68. In or about March 1988, the Administrative Commission advised the Church Session and plaintiff Church corporation in writing that unless the Commission's guidance and recommendations be followed and the Church conduct itself in conformity with the Book of Order, the Commission would request the Presbytery of the Pacific to remove the Church pastor and Session and to dissolve the congregation. In response, the Church elders signed a letter to the Administrative Commission dated April 30, 1988, agreeing to follow the Commission's recommendations; and on July 7, 1988, the Church Session, as the governing body of the Korean United Presbyterian Church, voted to adopt all matters stated in the April 30, 1988 letter.

69. On or about July 31, 1988, Rev. Sang Bom Woo, purporting to speak on behalf of the congregation, repudiated the action of the Church Session taken on July 7, 1988.

70. On or about October 14, 1988, the Administrative Commission gave written notice to Rev. Sang Bom Woo, the Church Session and the plaintiff Church corporation of its intention to recommend to Presbytery of the Pacific, a higher judicatory and governing body of the Presbyterian Church (U.S.A.), that Rev. Woo be removed as pastor, that the Church Session be removed and that

further recommendations be made as to the viability of the Korean United Presbyterian Church congregation. The written notice stated that a hearing regarding the Commission's recommendations would be held and provided for an opportunity to appear and be heard.

71. At a duly noticed meeting of the Presbytery of the Pacific held on November 8, 1988, the Presbytery adopted the Administrative Commission's recommendations and removed Rev. Woo as pastor, removed the Session of the Church and appointed a new Commission with powers of the Session in all particulars. Neither Rev. Sang Bom Woo nor any representative of the plaintiff Church corporation appeared at or attended the November 8, 1988 meeting.

72. On or about November 10, 1988, the Presbytery of the Pacific gave written notice to Rev. Sang Bom Woo and the former clerk of the Church Session of its actions of November 8, 1988, and on November 18, 1988, gave them further notice of their right to appeal the Presbytery's action to the Synod of Southern California and Hawaii. Neither Rev. Woo nor the plaintiff Church corporation exercised their right of appeal.

73. There is a schism within the membership of the Korean United Presbyterian Church of Los Angeles, and the Presbytery of the Pacific has identified one of the factions as the true church within the Presbyterian Church (U.S.A.) and has designated that faction as the one entitled to use the Church property for Church purposes.

74. By reason of the foregoing, the matters alleged in the within action have been fully adjudicated in accordance with principles of due process by the appropriate judicatories of the Presbyterian Church (U.S.A.) and any civil intervention into these ecclesiastical matters would violate the First and Fourteenth Amendments of the United States Constitution.

FIFTH AFFIRMATIVE DEFENSE TO
ALL CAUSES OF ACTION

(Failure to Pursue Administrative
Remedies and Appeals)

75. Defendants reallege and incorporate by reference the allegations of paragraphs 67 through 74, above.

76. By reason of the foregoing, plaintiff is barred from maintaining the within action by its failure to attend the hearings and pursue the remedies and appeals provided by the Book of Order, to which plaintiff agreed to adhere and follow.

SIXTH AFFIRMATIVE DEFENSE TO
ALL CAUSES OF ACTION

(Lack of Authority to Maintain Action)

77. The course of conduct pursued by plaintiff Church corporation beginning on at least July 31, 1988, is outside the scope of plaintiff's Articles of Incorporation.

78. The filing and maintenance of the within action has not been properly authorized by action of the Session of the Korean United Presbyterian Church or the plaintiff

Church corporation in accordance with its Articles of Incorporation and By-Laws.

79. The retention of counsel to prosecute the within action has not been properly authorized by action of the Session of the Korean United Presbyterian Church or the plaintiff Church corporation in accordance with its Articles of Incorporation and By-Laws.

SEVENTH AFFIRMATIVE DEFENSE TO
SEVENTH CAUSE OF ACTION

(Adequate Remedy at Law)

80. Plaintiff has adequate remedies at law and thus is not entitled to injunctive relief.

EIGHT AFFIRMATIVE DEFENSE TO
THIRD, FOURTH AND SIXTH CAUSES OF ACTION

(Statute of Limitations)

81. The alleged Third, Fourth and Sixth Causes are barred by the statute of limitations, including those set forth in California Code of Civil Procedure Section 338(4).

WHEREFORE, defendants pray judgment as follows:

1. That plaintiff take nothing by its complaint;
2. That plaintiff be adjudged to hold any right, title or interest it has in the Church property in trust for the use and benefit of the Presbyterian Church (U.S.A.);
3. That defendants be award their costs of suit herein;

4. And that the Court grant such other relief as it may deem just.

DATED: January 5, 1989

LATHAM & WATKINS

Robert A. Long

Dong-Gun Kim

By /s/ Robert A. Long

Robert A. Long

Attorneys for Defendants

Presbytery of the Pacific,

Synod of Southern California

and Hawaii and Presbyterian

Church (U.S.A.)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

KOREAN UNITED PRESBYTERIAN	)	CASE NO.
CHURCH OF LOS ANGELES, a	)	C 706 927
California non-profit corporation,	)	STATEMENT OF
Plaintiff and	)	DECISION
Cross-Defendant,	)	(C.C.P. § 632)
vs.	)	[Bifurcated Trial -
PRESBYTERY OF THE PACIFIC;	)	as to Real
SYNOD OF SOUTHERN	)	Property Issues
CALIFORNIA AND HAWAII;	)	Only]
THE UNITED PRESBYTERIAN	)	(Filed Jan. 8, 1990)
CHURCH OF THE UNITED)	
STATES AKA PRESBYTERIAN)	
CHURCH (U.S.A.),)	
Defendants and)	
Cross-Complainants.)	
SANG BOM WOO,)	
Cross-Defendant.)	

The above-entitled matter came on regularly for trial on December 26 and December 27, 1989 in Department 53 of the above-entitled court, the Honorable Dion G. Morrow, Judge presiding without a jury; plaintiff appeared represented by Edward L. Masry and Patricia S. Teitel of Masry and Vititoe; defendants appeared represented by Robert A. Long of Latham and Watkins; by stipulation, the trial proceeded on the first and second causes of action of the complaint (quiet title and declaratory relief) and on the cross-complaint to enforce express trust and

recover possession of real property (ejectment) and trial of the additional causes of action of the complaint was bifurcated; a written Stipulation Of Facts For Trial was admitted in evidence as Exhibit 82; further evidence both oral and documentary was received by the court; the matter was argued to the court and submitted, and the court renders the following statement of decision.

FINDINGS

The court finds, by a standard of clear and convincing evidence, that the plaintiff, Korean United Presbyterian Church of Los Angeles is the owner of and entitled to the entire beneficial interest in, and possession of, each of the parcels of the subject real property.

Plaintiff's ownership is subject to existing loans in favor of the defendant Synod and PC U.S.A. in the sum of \$200,000. Title to said properties is hereby quieted in that fashion. The present arrangement whereby the Presbytery holds record title to the church property (Lots 5 and 6 of Schofield Tract, Lots 3, 4, 5 and 6 of the Hoffman Tract, and Lot 13 in Block 8 of the Howes Tract) is in fact a mortgage pursuant to section 2920(a)(b) of the Civil Code. The terms of the mortgage are as stated in the loan documents. Upon repayment of the loans, the plaintiff is entitled to full and complete reconveyance of all of the said real property to it by the defendants Synod and PC U.S.A. Upon repayment of the loans according to their terms, the defendants must convey the property to the plaintiff.

Title to Lots 5 and 6 of the Hoffman Tract was acquired on May 8, 1936 in the name of the Presbytery of

Los Angeles. The Presbytery has held title of record to said lots in its name ever since. The court finds by clear and convincing evidence that said title is held, and has always been held, by the Presbytery in trust for plaintiff Korean United Presbyterian Church, and that plaintiff is the sole owner of all beneficial interest therein. The court also finds that it was the intent of the parties that the said property be part of the security for the loan and subject to the same terms and conditions as the other properties.

The court finds that the said property is held by said plaintiff for nonprofit, charitable and religious purposes but that there is no legally enforceable trust, either express or implied, as to the use or maintenance of said church property in favor of the defendant-cross-complainants Presbyterian Church U.S.A. or Presbytery of the Pacific.

Pursuant to the request of defendant, a severed judgment as to the first and second causes of action and the cross-complaint is hereby ordered entered in accordance with these findings in favor of the plaintiffs and against the defendants, and in favor of the cross-defendants and against the cross-complainants. The prayer of the cross-complaint for ejectment and imposition of trust is denied.

Counsel for plaintiff is ordered to prepare a judgment in accordance herewith in form suitable for recordation.

FACTS

The Presbyterian Church of the United States of America was founded in Philadelphia in 1789. During the Civil War the Church was divided into two factions

which remained divided until 1983 at which time the two factions were "reunited" as "Presbyterian Church (U.S.A.)" (PC U.S.A.). The church is a Protestant Christian church operating worldwide and organized in a hierarchical fashion. The church considers the Scriptures to be its ultimate authority and Christ its ultimate head. Its operative controlling body is its nationally formed "General Assembly." Its chief operating officer is its stated Clerk, at present Dr. James E. Andrews. PC U.S.A. is divided on a geographic basis into Presbyteries. The local Presbytery is now the Presbytery of the Pacific and involves all of Southern California south of Mulholland Boulevard and west of East Los Angeles, and the State of Hawaii.

The Presbytery consists of member congregations, each called a "particular church."

Each particular church is organized in the same way. The particular church is authorized and directed to form a legal corporation for the purpose of holding its property. The particular church is governed by an elected "session" which consists of elders of the church headed by a moderator who normally is the pastor of the church. The Presbytery, not the congregation, selects, calls and installs the pastor of each church. The Presbytery has the power to remove, discipline or suspend the pastor and the session of any particular church and to place a moderator other than the pastor in charge of the session. The moderator calls all meetings of the session and must be present at any meeting of the session. Under Presbyterian church doctrine, the membership of the particular church has no power to control or vote on any issues pertaining

to either doctrine or dogma or to the conduct of any of its property or business.¹

The Constitution of the Presbyterian Church (U.S.A.) consists of the Book of Confessions and the Book of Order. The Book of Confessions is entirely concerned with liturgical matters. The Book of Order (exhibit 57) contains what would be called the Constitution and By-Laws, as well as detailed operating descriptions of the church and all of its sub-parts. It provides that all property held by or for a particular church, a Presbytery, a Synod, the General Assembly or PC U.S.A., whether legal title is lodged in a corporation, held by trustees or in an unincorporated association, and for whatever use is "held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.)" [Chap. VIII, para. 2]. The same chapter provides that whenever the property of a particular church ceases to be used by that church as a particular church of PC U.S.A. in accordance with the Book of Order the property shall be held, used, applied, transferred or sold as provided by the Presbytery. Also, that when a particular church has been dissolved or otherwise terminated that its property may be sold or disposed of by the Presbytery. A particular church may not sell, mortgage or otherwise encumber any of its real property or acquire real property subject to any encumbrance or condition without the written permission of the Presbytery.

¹ Dr. Andrews testified that as stated Clerk he had always assumed the congregation had the right to vote and advise on property matters. When it was pointed out that the Book of Order did not so provide, it was amended effective 1989 to make such provision. The congregational vote is advisory, not controlling.

there is a schism within the membership of a particular church, the Presbytery shall determine if the one of the factions is entitled to the property of the particular church because it is identified by the Presbytery as the "true church" within PC U.S.A. This decision does not depend upon, or have any stated relationship to, the majority vote of the particular church membership.

About 1906, Korean immigrants to the United States of America formed a Presbyterian church congregation in Los Angeles. It was the first such church in the United States, and the local Presbytery played an active role in its formation. The church was originally called the Korean Presbyterian Church of Los Angeles. It eventually became the plaintiff in this case. On March 22, 1936, the church voted to buy land, move to a new location, and build a new church building at 1374 West Jefferson Boulevard, Los Angeles, California (Lots 5 and 6 of the Hoffman Tract). The deed to the property was recorded May 28, 1936 in the Name of the defendant Presbytery. The Korean church was not incorporated at that time and could not take title in its own name. Certain Caucasian members of the Presbytery donated substantial sums of money to the building fund of the church through the Presbytery. The church then entered into a contract to build its church building and borrowed money from the the national missions of the Presbyterian Church of the United States of America on non-interest bearing notes in the name of the Presbytery. The building was constructed, and the plaintiff church took possession of the property.

Plaintiff has been in continuous and exclusive possession of said property to this date.

In 1945 the church was incorporated under the non-profit corporation laws of the State of California. Since its incorporation its articles have provided as follows:

"This corporation shall be at all times subject and adhere to the doctrine and disciplines of the Presbyterian Church in the United States of America."

Its articles have also provided that the corporation was formed for the purpose of the establishment and maintenance of a place or places for worship and instruction and for the dissemination and spreading of the Christian doctrine among the peoples of the world and that its membership shall be governed by its by-laws and "the doctrine and disciplines of the Presbyterian Church in the United States of America."

On April 30, 1945, the Presbytery acknowledged that the \$4,000.00, which it had borrowed on January 17, 1938 had been paid in full by the Church; sent the paid note and cancelled mortgage to the church and congratulated it on its accomplishment. The Presbytery did not however convey the title to the church.

In 1957, the Presbytery approved the Church's plan to spend \$29,000.00 on an Educational Unit. The church put up \$12,000.00, used a \$3,000.00 bequest to it, and borrowed the balance from the defendants. These loans were paid by plaintiff by February 12, 1965.

On June 12, 1979, Presbytery approved the following recommendation of its Program Cabinet:

"That title to all of the lots of the Korean United Presbyterian Church be transferred to the Korean United Presbyterian Church as one

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property, and that Synod be notified of the Presbyterian action."

From the date of acquisition of Lots 5 and 6 of the Hoffman Tract in 1936 and 1937, respectively, through June 23, 1983, the Presbytery held title to both lots solely in its name although it acknowledged that the church was the true owner of the lots and promised to convey them to the church.

On June 23, 1983, the Synod, acting on behalf of the old Presbytery of Los Angeles, executed a Grant Deed to Lots 5 and 6 of the Hoffman Tract to the Presbytery, in order to clarify the chain of title. This Grant Deed was recorded on October 5, 1983. At all times since June 23, 1983, record title to Lots 5 and 6 of the Hoffman Tract has been held in the name of the Presbytery. (In June 1977, the name of the corporation was changed from Korean Presbyterian Church of Los Angeles to Korean United Presbyterian Church of Los Angeles.)

The church acquired title to Lots 5 and 6 of the Schofield Tract in July 1977.

The church acquired title to Lot 3 of the Hoffman Tract in December 1977, and Lot 4 of the Hoffman Tract in January 1979. Lot 4 was deeded to the church by Korean National Association of North America. The lots are contiguous and constitute one parcel of land.²

² The history of Lot 13, Block 80 of Howes Tract @ map recorded B. 16, P. 60 of Misc. rec.; L.A. Co. Recorder was not stipulated to. It is agreed that it was purchased in the church's name and transferred to the Presbytery as part of the building loan program in 1983.

The members of the church bought and paid for each piece of land. The Presbytery has loaned the church money, solicited gifts for it, and advised and assisted in each purchase.

As each lot was acquired, it was totally controlled by and used and occupied by the plaintiff. However, the occupancy and use of the property by the church was always in accordance with the by-laws and disciplines of the defendants Presbytery and PC U.S.A. From time to time, for example, new pastors were called by the Presbytery, and the session was suspended and administrative committees put in control of the church.

In 1982, the church decided to embark upon a new building program, including construction of a new sanctuary and a parking lot on Lots 5 and 6 of the Schofield Tract. To assist in the financing of the construction of these buildings, the Church made application through the Presbytery for Loans totalling \$200,000 from the Synod and the General Assembly of PC U.S.A. In or about 1983, the Synod and General Assembly approved loans of \$75,000 and \$125,000, respectively, for construction of these Church properties. As a condition of its loan, the General Assembly required the Presbytery to be the principal obligor on the loan documents and to hold title to the Church property for as long as the loans were outstanding. The church agreed to these conditions and deeded its property to the Presbytery.

As security for the loans of \$75,000 and \$125,000, the Presbytery executed deeds of trust on all the Church properties in favor of the Synod and the General Assembly, respectively, securing repayment of the loans. These

Trust Deeds were recorded on October 5, 1983, when the loans were funded.

The Presbytery has acknowledged that it holds legal title to Lots 5 and 6 of the Schofield Tract, Lots 3 and 4 of the Hoffman Tract and Lot 13 in Block 8 of the Howes Tract for only as long as the loans are unpaid. Defendants have agreed that when the loans are fully repaid, the Presbytery will reconvey legal title.

The promissory notes in favor of PC U.S.A. were executed by the Presbytery and attested to by the church. The principal amount of both loans, \$200,000, is still outstanding, but the church has received a tentative commitment for take-out financing from a local Korean bank.

The Presbytery claims that it has the right and power to withhold approval of such new loan, even though it would be paid off, because of Chapter VIII, Sec. G-8.0500 of the Book of Order.³ The refusal of the Presbytery to allow the new financing appears to be a major issue in the quarrel between the parties.

The church has paid all of the applicable real property taxes.

The church began to have serious issues among its membership. In 1986 the Presbytery removed the pastor, Reverend Sang Bom Woo, as moderator of the session and appointed a commission (the Bennett Commission) to conduct the session. Later the Reverend James Morrison,

³ Dr. Andrews testified that PC U.S.A. has always felt a moral obligation to stand behind member congregations' building loans.

Pastor of the Beverly Hills Presbyterian Church was appointed moderator. Issues began to develop that culminated in the calling of a meeting of the Church members on July 31, 1988. At that time Pastor Woo had an attorney present (plaintiff's present counsel) and refused to permit Reverend Morrison to chair the meeting or even make any statement. The attorney advised the congregation that the Presbytery controlled its property. Claims are made that the presentation was done in an inflammatory manner. In any event, the Presbytery removed the session of the church on November 8, 1988 and removed Pastor Woo as pastor on the same day. Pastor Woo resigned from the Presbytery on December 1, 1988 and the church now has adopted new by-laws withdrawing from the Presbyterian Church (U.S.A.).⁴ A small part of the membership of the church, estimated to be between fifteen and thirty percent of the membership, has been worshipping at another church, Emmanuel Presbyterian. The Presbytery, pursuant to Ch. VIII, Sec. G-8.0600 of the Book of Order has decided that this faction is the "true church" and seeks possession, title and control of plaintiff's property in order to place the "true church" in it. The defendants make no claim of ownership in or to the property on their own behalf. There is no evidence to suggest that defendants intend to destroy the church building or seek to convert the use of the land to any purpose except as a congregation of Presbyterians of Korean extraction under the control of Presbyterian Church U.S.A. In other words,

⁴ The new By-Laws were adopted on March 10, 1989. They provide that the church remains a Presbyterian Church but seeks to align the church with a new Presbytery, the Korean Presbyterian Church in America.

defendants make no claim of ownership in their own right under any circumstances but only as trustee for what it has determined to be the true church of the Korean congregation which it claims hold the property pursuant to an express trust created by the Book of Order and articles and by-laws of the church.

CONCLUSIONS

The law with regard to the determination of the ownership of church property appears settled by the leading case of *Protestant Episcopal Church vs. Barker*, 115 Cal.App.3d 599. That case adopts for California the rule that the rights of disputants to the title to Church Property be determined under "neutral principles of law" as to the creation of any express trust in the real property, and rejects the so-called hierarchical theory of ownership and control as well as any implied trust theory. The case holds that the issue of Ownership is to be determined by deeds and evidences of title, articles of incorporation of the local church, state statutes and rules of the general church organization.

The only complication in this case as it relates to the rule Protestant Episcopal Church is the fact that the title of record to all of the land is now held in the name of the defendant parent body and not the plaintiff local church. Thus, the court must look to the express intention of the parties in the settlement of the title in order to find the true ownership of the land. The rule is that any finding of ownership in contradiction of deeds of record must be made by clear and convincing evidence, and indeed the evidence in this case goes beyond even that stringent

standard. There is simply no doubt that all the parties have always intended that the subject land be owned, operated, and controlled by a Presbyterian congregation of persons of Korean extraction or nationality. This has been so since the first two lots were acquired in 1936. The evidence demonstrates that as early as 1930 monies were contributed to a Church Extension Board of Los Angeles Presbytery for the Korean Church Building Fund. The establishment of the church itself was part of the missionary program of the Presbyterian Church. Never, through the fifty-six years the church has occupied the West Jefferson Boulevard location, has the property been put to any other or different use. While record title has been transferred freely between the church, the Presbytery, the synod and the national body, there simply is no doubt whatsoever but that it was always the intention of all the parties that the subject land be owned and occupied by a Korean Presbyterian Church. In fact, at the present time, defendants intend to have the property owned and occupied by a Korean Presbyterian Church. The issues simply are, which body of that divided church will be in possession and control, and is the church bound by the provisions of Book of Order. Put another way, the question is whether the majority of the membership of the church has the power to control its destiny and its religious affiliation while maintaining the ownership and possession of its property, or whether the Presbytery and PC U.S.A. have the right to select a minority of the membership to occupy and own the property as the "True Church." The fact that the record title to the land does not stand in the plaintiff's name is irrelevant for the purposes of determining the issues in this case.

The claim of the defendants that an express trust exists in its favor is defeated by the holding in Protestant Episcopal Church. I note the following:

a. There is no indication of the intent to form any such trust.

b. There is no evidence the Book of Order or any other church document so provided in 1906 when the church was organized, 1937 when it began to acquire land or 1945 when it was incorporated.

c. The articles and by-laws of the church contain no provision of express trust. Section 9132 of the Corporations Code (formerly section 9301 enacted 1947 and amended 1949) provides that the Articles of Incorporation of a subordinate corporation instituted or created under the authority of a head organization *may* provide that the subordinate corporation shall dissolve whenever its charter is surrendered to, taken away or revoked by the head organization or that in the event of its dissolution for any reason any assets shall be distributed to the head organization. This provision *shall not be effective unless expressly provided in the articles*. This law has been available for more than forty years. One might inquire why it was not utilized in this situation as it was in regard to Holy Apostles Church in *Protestant Episcopal Church v. Barker*. It is my opinion that the availability of this section and the lack of its use, and the facts of this case, are very significant in defeating any claim of an express trust in this situation.

d. The congregation, over a period of over 50 years has planned, bought and paid for its church home. While the Presbytery has given advice and aid, such advice and

aid do not differ in any material fashion from that in Protestant Episcopal Church.

Did Plaintiff, Korean United P.C ever agree to hold its property in trust for the Presbytery, the Synod or PC U.S.A? Clearly, the answer is NO. The church used all the help it got while it was a willing member of the parent body but when it was informed that the parent was imposing property restrictions against its will, it rebeled. The by-laws and articles, and the declarations in the book of Order are "nothing more than expressions of present intention." Pros. Ep. Chp. 623. They do not create an express trust.

Dated: Jan. 8, 1990

/s/ Dion G. Morrow
DION G. MORROW
Judge of the Superior Court

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

KOREAN UNITED PRESBYTERIAN	)	CASE NO.
CHURCH OF LOS ANGELES, A	)	C 706 927
California non-profit corporation,)	
Plaintiff,	)	JUDGMENT
	)	(PARTIAL)
vs.)	
PRESBYTERY OF THE PACIFIC, a)	
California non-profit corporation,	)	(Filed
SYNOD OF SOUTHERN	)	Feb. 2, 1990)
CALIFORNIA and HAWAII, A)	
religious corporation, THE UNITED)	
PRESBYTERIAN CHURCH OF THE)	
UNITED STATES aka)	
PRESBYTERIAN CHURCH (USA),)	
A corporation; and all other persons)	
unknown, claiming any right title,)	
estate, lien or interest in the real)	
property described in the complaint)	
adverse to any of Plaintiff's)	
ownership, or any cloud on)	
Plaintiff's title thereto, and DOES 1)	
through 200, inclusive,)	
Defendants.)	

This action came on regularly for trial on December 26 and December 27, 1989, in Department 53 of the above-entitled Court, the Honorable Dion G. Morrow, Judge presiding without a jury. Plaintiff appeared represented by Edward L. Masry of Masry & Vititoe; Defendants appeared represented by Robert A. Long of Latham & Watkins. By stipulation, the trial proceeded on the first and second causes of action of the complaint (to Quiet Title and for Declaratory Relief) and on the Cross-Complaint to enforce and an express trust and recover possession of real property, and trial of the additional causes of action of the complaint was bifurcated. A written Stipulation of Facts for Trial was admitted into evidence; further evidence, both oral and documentary, was received by the Court; the matter was argued to the Court and submitted, and the Court having announced its intended decision in this matter,

IT IS ORDERED, ADJUDGED, AND DECREED that:

1. Plaintiff KOREAN UNITED PRESBYTERIAN CHURCH OF LOS ANGELES, is the owner of, and entitled to the entire interest in, and possession of, each of the following parcels of real property:

Lot 5 of the Hoffman Tract, in the City of Los Angeles, County of Los Angeles, as per map recorded in Book 6, page 13 of Maps in the Office of the County Recorder of Los Angeles.

Lot 6 of the Hoffman Tract, in the City of Los Angeles, County of Los Angeles, as per map recorded in Book 6, Page 13, of Maps, in the Office of the County Recorder of Los Angeles.

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Lot 4 of the Hoffman Tract, in the City of Los Angeles, County of Los Angeles, as per map recorded in Book 6, Page 13 of Maps, in the Office of the County Recorder of Los Angeles.

Lot 3 of the Hoffman Tract, in the City of Los Angeles, County of Los Angeles, as per map recorded in Book 6, Page 13 of Maps, in the Office of the County Recorder of Los Angeles.

The east 40 feet of the west 42 feet of Lot 5 of the Schofield Tract, in the City of Los Angeles, County of Los Angeles, as per map recorded in Book 4, Page 24 of Maps, in the Office of the County Recorder of Los Angeles.

All of Lot 6 and the east 8 feet of Lot 5 of the Schofield Tract, in the City of Los Angeles, County of Los Angeles, as per map recorded in Book 4, Page 24 of Maps, in the Office of the County Recorder of Los Angeles.

Lot 13 in Block 8 of the Howes Tract, in the city of Los Angeles, County of Los Angeles, as per map recorded in Book 16, Page 60 of Miscellaneous Records, in the Office of the County Recorder of Los Angeles.

2. Upon repayment of loans in favor of the Defendants SYNOD OF SOUTHERN CALIFORNIA AND HAWAII and/or the PRESBYTERIAN CHURCH (U.S.A.), or their assignee, in the principal sum of \$200,000.00 or any balance then due, the Defendants shall make full and complete reconveyance to Plaintiff of all of the above-described real property.

3. The Cross-Complaint of the Defendants is denied.

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4. Trial of the Third, Fourth, Fifth, Sixth and Seventh Causes of Action of the Plaintiff's Complaint is hereby bifurcated.

DATED: February 2, 1990

/s/ Dion G. Morrow
DION G. MORROW
JUDGE OF THE
SUPERIOR COURT

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

KOREAN UNITED PRESBYTERIAN	)	No. B048755
CHURCH OF LOS ANGELES, etc.,)	
Plaintiff, Cross-Defendant	)	(Super.Ct.No.
and Respondent,	)	C706927)
)	
v.	)	(Filed
PRESBYTERY OF THE PACIFIC,	)	May 23, 1991)
etc., et al.,)	
)	
Defendants, Cross-Complainant)	
and Appellants.)	
)	
)	
)	

APPEAL from a judgment of the Superior Court of Los Angeles County. Dion G. Morrow, Judge. Reversed.

Latham & Watkins and Robert A. Long for Defendants, Cross-Complainant and Appellants.

Masry & Vititoe and Edward L. Masry for Plaintiff, Cross-Defendant and Respondent.

Appeal by defendants and cross-complainant, bodies of the Presbyterian Church (U.S.A.), from a judgment (partial)¹ of the Los Angeles County Superior Court in

¹ By stipulation, the trial proceeded on the first and second causes of action of the complaint to quiet title and for

favor of plaintiff, cross-defendant and respondent, Korean United Presbyterian Church of Los Angeles, the Honorable Dion G. Morrow, Judge presiding. Reversed.

I.

INTRODUCTION

On this appeal we are called upon to decide the central question of whether the trial court made its judgment awarding the subject church property to the Korean United Presbyterian Church of Los Angeles, then controlled by a dissident faction of the Presbyterian congregation to the detriment of a contending "exiled" faction

(Continued from previous page)

declaratory relief, respectively, and on the cross-complaint to enforce an express trust and for recovery of possession of real property. Trial of the additional causes of action of the complaint were bifurcated. The remaining and untried five causes of action of the complaint sound in fraud, violation of civil rights - racial discrimination, RICO fraud and conspiracy and for an injunction. The record is not clear under what statute the trial court was proceeding when it severed the trial of the causes of action as heretofore discussed, however, a reasonable inference is that the court utilized Code of Civil Procedure section 1048 (severance and consolidation of causes). Although facially the final judgment rule would seem to preclude this appeal, we are cognizant of a number of exceptions to the rule. We are also aware that the trial court has broad discretion under Code of Civil Procedure section 1048 and will not be reversed on appeal except for an abuse of discretion. The property issues bifurcated and tried are reasonably separate and independent from the remaining untried issues, and we therefore, find no abuse of discretion and deem it appropriate to hear this appeal involving a partial judgment. (See *Schonfeld v. City of Vallejo* (1975) 50 Cal.App.3d 401, 418-419.)

of the same congregation, without violating first amendment proscriptions against governmental involvement in religious matters, by the use of "neutral principles of law." An ancillary question to be decided is whether the acts of the dissident faction, which retained possession and control of the church premises while purporting to take governmental actions on behalf of the congregation after expulsion of the competing faction, are legally viable.

We conclude that the court could have and should have decided the case by utilizing "neutral principles of law," which as a matter of law would have mandated a judgment in favor of appellants in the trial court, but instead violated first amendment proscriptions by the judgment that it ultimately made. We further conclude that the acts and measures taken and enacted by the faction retaining possession and control of the church premises and government were unlawful as a matter of law and of no legal effect. For the reasons hereafter discussed, the matter is reversed and remanded to the trial court with instructions to enter judgment for appellants as directed.

II.

OVERVIEW

Trial of this case proceeded upon the parties' stipulation to many of the facts, and the admissibility of most of the documents. During two days of trial, two witnesses were called by plaintiff; five by defendants. No significant evidentiary issues were argued; none are asserted as

error on appeal. The testimony of all witnesses was largely uncontroverted.

At the core of this case are disputes regarding: (a) the ownership, use and control of church property; and (b) the governance and control of the nonprofit church corporation which, as agent of the church's congregation, holds its interest in that property.

Since the early part of this century, Korean United Presbyterian Church of Los Angeles ("Church" or "KUPC") has been a local church and congregation in the national denomination now known as the Presbyterian Church (U.S.A.) ("PCUSA"). The Church has enjoyed a rich history as the oldest Korean immigrant congregation in the United States.

Presbytery of the Pacific ("Presbytery"), a governing body in PCUSA, originally helped to develop the Church congregation, acquired for the Church its first properties and secured financing for construction of a sanctuary and other buildings. Presbytery has actively worked with the Church for 80 years, securing pastoral leadership and giving other forms of support and encouragement.

In recent years, a schism developed within the Church congregation, primarily over the views and leadership of Rev. Sang Bom Woo, who served as Pastor of the Church from 1975 until November 1988. While Presbytery worked for the reconciliation of Rev. Woo with the portion of the congregation he considered to be "dissidents," the reconciliation failed.

In July 1988, Rev. Woo began steps to disengage himself and his followers from PCUSA, while concurrently acquiring control of the plaintiff nonprofit corporation, which had been incorporated in 1945 to act as the Church's agent in the handling of its temporal affairs. The schism ultimately resulted in the purported dissident faction departing from the Church property. Since late 1988, this faction, estimated to encompass between 15 and 30 percent of the original membership, has been worshipping as a body and conducting the Church's activities in space provided by Emmanuel Presbyterian Church in Los Angeles, pending the outcome of this litigation.

Acting in accordance with the Book of Order, which sets forth the canon law and form of government for PCUSA and its constituent bodies, Presbytery designated the "exiled" congregation as the "true church." In its cross-complaint, Presbytery seeks to establish the right of the "exiled" congregation to be returned to the Church property to engage in worship, education and religious activities. This "true Church" congregation remains a party of Presbytery and PCUSA, as it has for over 80 years.

On December 1, 1988, Rev. Woo resigned from Presbytery, and on December 11, 1988, he persuaded his followers to vote for a withdrawal from PCUSA. Despite his resignation and their withdrawal, however, Rev. Woo and his followers continue to occupy the Church property to the exclusion of the "exiled" congregation which has been designated the "true Church" congregation by Presbytery.

The complaint in this action, alleging seven causes of action, was filed by Rev. Woo and his followers on behalf of the plaintiff corporation against PCUSA, Presbytery and the Synod of Southern California and Hawaii. Five causes of action were bifurcated at the outset of trial, with trial proceeding only on the first cause of action for quiet title to the Church property and the second cause of action for declaratory relief "that the Defendants have attempted, . . . to gain for itself [sic] title to the real property belonging to Plaintiff."

The cross-complaint, filed by Presbytery of the Pacific, alleges that the plaintiff corporation's right, title and interest in the Church property is held in trust for the use and benefit of PCUSA, subject to the direction of Presbytery. In a first cause of action, Presbytery seeks to enforce this express trust on the Church property for the benefit of the "true Church" congregation, as designated by Presbytery. In a second cause of action, Presbytery seeks restitution of the Church property and a writ of possession directing that Rev. Woo and his followers be removed. Presbytery has also alleged that the complaint in this action was initiated and is prosecuted without proper corporate approval and authorization.

III.

SUMMARY OF MATERIAL FACTS

Presbyterian Church (U.S.A.)

Defendant Presbyterian Church (U.S.A.) is a national religious denomination, the hierarchical church to which KUPC has always belonged. PCUSA was formed in 1983

upon the reunion of two predecessor denominations, the Presbyterian Church in the United States and the United Presbyterian Church in the United States of America. Prior to that reunion and change of name, KUPC was a part of the United Presbyterian Church in the United States of America.

PCUSA (and prior to the reunion, the United Presbyterian Church in the United States of America) is governed according to an ascending order of judicatories or governing bodies: church sessions, presbyteries, synods and the General Assembly. The government of the local church is committed to its session, composed of the ministers and ruling elders (laypersons who are ordained to the position of elder) of that church, the actions of which are subject to review by the next higher judicatory, the presbytery. A presbytery is the basic unit of presbyterian [sic] church [sic] government, composed of ministers and elders who represent all the particular churches in a certain geographic area and meet regularly as a legislative body. Presbyteries, in turn, are grouped under the jurisdiction of a synod, the next higher governing body. The highest judicatory is the General Assembly of PCUSA, which is composed of representatives elected by each presbytery.

In this case, KUPC and its pastor and congregation were under the jurisdiction of Presbytery of Los Angeles until 1968 when that presbytery was divided into five new presbyteries, one of which became Presbytery of the Pacific. The jurisdiction of Presbytery of the Pacific now includes the supervision and care of approximately 50 PCUSA churches, including KUPC. Presbytery is, in turn, a part of and under the jurisdiction of defendant Synod of Southern California and Hawaii ("Synod").

The Book of Order

PCUSA is organized and governed under a formal Constitution that consists of "The Book of Confessions" and "The Book of Order." One part of The Book of Order sets out the "Form of Government" applicable to PCUSA and all its connectional parts, including local churches, sessions, presbyteries, synods and General Assembly.²

The Book of Order has added significance in the case at bar – it is expressly referenced in plaintiff's articles of incorporation and in its corporate bylaws as the canon law to which the corporation is to be subject and is to adhere. The Book of Order governs both the Church, as an unincorporated religious body, and plaintiff, as the nonprofit corporation formed to conduct the Church's temporal affairs.³

The Book of Order empowers a presbytery, inter alia, to review the records of church sessions within its jurisdiction, redress the action of any session taken contrary to order and see that sessions observe the constitution of PCUSA. The presbytery alone has powers to organize new churches, receive and dismiss existing churches, and dissolve old churches, as well as to ordain, receive, dismiss, install and remove ministers. The presbytery may

² The Book of Order provides that: "Each particular church of the Presbyterian Church (U.S.A.) shall be governed by this Constitution."

³ The Book of Order provides that the powers of the church corporation are subject to the authority of the session and to the Constitution of PCUSA.

also appoint an administrative commission for a particular church and empower the commission to assume the original jurisdiction of the church's session.

Chapter VIII of the Book of Order sets forth provisions pertaining to "The Church and its Property," including paragraph G-8.0200, entitled "All Property Held in Trust:" as follows:

"All property held by or for a particular church, a presbytery, a synod, the General Assembly, or the Presbyterian Church (U.S.A.), whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, . . . is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.)." (Emphasis added.)

Paragraph G-8.0300, entitled "Property Used Contrary to Constitution:" provides:

"Whenever property of, or held for, a particular church of the Presbyterian Church (U.S.A.) ceases to be used by that church as a particular church of the Presbyterian Church (U.S.A.) in accordance with this Constitution, such property shall be held, used, applied, transferred, or sold as provided by the presbytery."

Paragraph G-8.0600, entitled "Property of Church in Schism:" provides:

"The relationship to the Presbyterian Church (U.S.A.) of a particular church can be severed only by constitutional action on the part of the presbytery *If there is a schism within the membership of a particular church and the presbytery is unable to effect a reconciliation or a division into separate churches within the Presbyterian Church*

(U.S.A.), the presbytery shall determine if one of the factions is entitled to the property because it is identified by the presbytery as the true church within the Presbyterian Church (U.S.A.). This determination does not depend upon which faction received the majority vote within the particular church at the time of the schism." (Emphasis added.)

Korean United Presbyterian Church of Los Angeles

In 1945, KUPC incorporated a nonprofit California corporation for the purpose of holding and transferring property and conducting the Church's business affairs. At all times since 1945, KUPC's Articles of Incorporation, have included the following:

"SIXTH: That this Corporation shall be at all times subject and adhere to the doctrines and discipline of the Presbyterian Church in the United States of America [the predecessor of PCUSA].

". . . .

"EIGHTH: That all members of the above mentioned unincorporated association shall be members of this Corporation. That the admittance of any members, and the expulsion or suspension of members, shall be governed by the By-laws of the Corporation and the doctrines and discipline of [PCUSA]."

The "doctrines and discipline" include the Form of Government set forth in the Book of Order. KUPC's articles have been amended on only one occasion, in June 1979, when the name of the corporation was changed from Korean Presbyterian Church of Los Angeles to Korean United Presbyterian Church of Los Angeles.

The bylaws [sic] of the Church, as translated from the Korean language in which they are written includes these provisions:

"Article 3. This Church was established on May 10, 1905 and is a member church of the Presbytery of the Pacific of the United Presbyterian Church of the U.S.A. [the predecessor of PCUSA].

* * *

"Article 62. As a general rule, any matter not provided for in these By-laws shall be determined in accordance with the Book of Order or the Presbyterian Law for the Local Church."

New bylaws [sic] were purportedly adopted by Rev. Woo and his followers in March 1989, long after they had initiated this lawsuit and had renounced membership in Presbytery and PCUSA.

The Church Property

The Church property consists of several separate lots, acquired over a period of 50 years and located generally at 1374 West Jefferson Boulevard, Los Angeles. Presbytery acquired the first of these lots in 1936 with contributions made to Presbytery for this purpose. The second lot was bought in 1937, also with contributions to Presbytery. Presbytery acquired title to both lots solely in its name and provided them for the KUPC congregation as the location of its first Church property. The first church buildings, completed in 1938, were financed by gifts made to Presbytery for its "Presbyterian Korean congregation" and from monies borrowed by Presbytery from

the Board of National Missions of the Presbyterian Church in the United States of America.

Since 1936 and 1937, Presbytery has held title to these first Church properties solely in its name. While title has never been held in the name of KUPC, either as an unincorporated association or a nonprofit religious corporation, the KUPC congregation has used and occupied the property as a particular church of PCUSA from 1938 until November 1988.

As the Church grew in the 1970's, it acquired additional lots to meet its need for expanded facilities. In 1982, the Church embarked upon a building program that included the construction of a new sanctuary and parking lot. To assist in the financing of these improvements, the Church made application through Presbytery for loans totalling \$200,000 from the Synod of Southern California and Hawaii and from the General Assembly of PCUSA. The Synod and General Assembly approved loans to KUPC of \$75,000 and \$125,000, respectively, in 1983. As a condition of its loan, General Assembly asked Presbytery to be the primary obligor on the loan documents and to hold title to all the Church property for as long as the loans were outstanding. Both Presbytery and KUPC agreed to this arrangement.

On July 14, 1983, KUPC executed a grant deed conveying to Presbytery all the Church property, except for the original two lots that Presbytery had acquired in 1936 and 1937. Those lots were already held in the name of the Presbytery; however, since they were initially acquired in the name of the old Presbytery of Los Angeles, the Synod, acting on behalf of that Presbytery, executed a grant deed

to the lots in favor of Presbytery of the Pacific, to clarify the chain of title.

As security for the loans of \$75,000 and \$125,000, Presbytery executed deeds of trust in favor of the Synod and PCUSA. When these trust deeds and the grant deeds executed by KUPC and Synod were recorded, the loans were funded. The principal amount of the loans, \$200,000, is still outstanding. In 1988, Rev. Woo and his followers attempted to refinance these loans through a commercial bank, without first seeking Presbytery's approval or obtaining the authorization of the Church's session or congregation. Presbytery's refusal to condone Rev. Woo's refinancing plan and its insistence that the plan be first approved by the Church session precipitated this lawsuit.

Control of The Church And The Non-Profit Corporation

All witnesses at trial agreed, and the trial court found, that the ruling body of KUPC, as an unincorporated religious body, was its session, which normally consisted of KUPC's pastor and the ruling elders elected by the congregation.

The Book of Order provides that the "session of a particular church consists of the pastor . . . and the elders in active service" and that the "session is responsible for the mission and government of the particular church." The nonprofit religious corporation formed to hold the Church's property and deal with its business affairs was accountable to the religious body through the session.

KUPC's session also served as the governing board of the nonprofit religious corporation, and it alone had

authority over the plaintiff corporation's affairs. KUPC's corporate bylaws placed this authority in the session:

"Article 36. The Session shall have all responsibility for the administrative affairs of this Church, [and] shall supervise all business and activities of the Church"

In approximately 1985, several members of the Church lodged complaints with Presbytery about contentions and divisions existing within the congregation and about the leadership of Rev. Woo. Acting in accordance with the Book of Order, Presbytery appointed, on June 28, 1986, an administrative commission to review these complaints and to work to bring reconciliation within the congregation. Presbytery also appointed Rev. James H. Morrison as chair of the administrative commission and empowered him to assume the position of moderator of KUPC's session. Rev. Morrison began his leadership almost immediately, and KUPC's elders submitted to his authority as moderator. Rev. Morrison served in this capacity (and thus as chair of the plaintiff corporation's board) from October 1986 until November 1988.

Under the Book of Order, session meetings could be validly conducted only with the moderator in attendance and under his authority. The session could not act without its moderator, and no official action on behalf of the Church could be taken without action of the session. Rev. Woo followed this principle of church and corporate governance until July 1988. Under the Book of Order, the congregation possessed only limited authority to conduct business, and nothing in KUPC's Articles or Bylaws purported to grant the congregation any greater powers.

The last regular meeting of KUPC's session occurred in June 1988, when the session concluded that to help bring harmony within the congregation, the Church should expand the size of its session to nine elders. The session called and duly noticed a congregational meeting for July 31, 1988, to vote on the increase in the number of elders and to elect elders to the new position. Under KUPC's Bylaws, and under the Book of Order, Rev. Morrison, as moderator of session, was to chair the congregational meeting.

On July 31, Rev. Woo and his faction were successful in obtaining control of the congregational meeting, effectively preventing Rev. Morrison from chairing the proceedings, denying him the right to speak and ignored the stated purpose and scheduled agenda of the meeting. Rev. Woo proceeded to pursue another agenda. Among other things, he introduced plaintiff's counsel, who addressed those in attendance and maintained that the Presbytery had taken the Church's property through fraud and discrimination.

The June session meeting was the last which Rev. Morrison moderated; and the July congregational meeting was the last he attempted to chair. No meeting of the KUPC session was held between August 1, 1988, and November 8, 1988.

At its regular meeting held on November 8, 1988, Presbytery voted to remove the session of the Church and Rev. Woo as its pastor, effective immediately. Presbytery also appointed a new administrative commission and empowered it to assume the original jurisdiction of KUPC's session and to fulfill the session's responsibilities

on all matters. None of these actions of Presbytery were appealed, although the Book of Order provides for a right of appeal. Rev. Woo and his faction were advised of that right, but took no action.

Since November 1988, the new session appointed by Presbytery has worked actively on behalf of the "true church" congregation, which continues to worship away from the Church property at Emmanuel Presbyterian Church. The new session continues to express a desire to return the true congregation to the Church property; it has never authorized the filing or prosecution of the complaint in this case or any refinancing of the Church property.

On December 1, 1988, Sang Bom Woo resigned and withdrew from membership of Presbytery, and the faction represented by Rev. Woo voted to renounce their membership in PCUSA. This lawsuit was initiated on the same date.

Judgment of The Superior Court

In its statement of decision, filed January 8, 1990, the superior court found that (a) plaintiff KUPC "is the owner of and entitled to the entire beneficial interest in, and possession of, each of the parcels of the subject real property;" (b) the 1983 grant deeds are, in effect, a mortgage securing the \$200,000 in loans from Synod and PCUSA, requiring defendants to reconvey the property upon repayment of the loans; (c) the lots acquired in 1936 (and 1937) in the name of Presbytery and held in its name since that time are held by it in trust for plaintiff KUPC;

and (d) under the principles set forth in *Protestant Episcopal Church v. Barker* (1981) 115 Cal.App.3d 599, there is "no legally enforceable trust, either express or implied, as to the use or maintenance of said church property in favor of [PCUSA or Presbytery]."

The decision of the superior court did not address the issue concerning who validly controls the plaintiff non-profit corporation, i.e. Rev. Woo's followers who have left the denomination or the current session that seeks to preserve it for the designated "true church." Further, the Court did not decide for whose benefit the plaintiff non-profit corporation holds its property interests, i.e. Rev. Woo's followers or the designated "true Church" congregation which seeks to return to the Church property. The court, however, expressly discussed these issues in its statement of decision as follows:

"The issues simply are, which body of that divided church will be in possession and control, and is the church bound by the provisions of Book of Order. Put another way, the question is whether the majority of the membership of the church has the power to control its destiny and its religious affiliation while maintaining the ownership and possession of its property, or whether the Presbytery and PC U.S.A. have the right to select a minority of the membership to occupy and own the property as the 'True Church.' " The court, never *expressly* decided these issues. However, the Court's judgment is impliedly premised upon the legal conclusions, albeit tacit ones, that Rev. Woo and the faction he represents are entitled to control the corporation for their own purposes (since the trial court left them in apparent control) and that the

Presbytery's determination of the "true church" is entitled to no deference (since the trial court left Rev. Woo and his followers in possession of the property).

IV.

ISSUES PRESENTED ON APPEAL

Appellants formulate the following issues to be decided on this appeal:

A. Did the trial court err when it failed to give deference to the determination made by Presbytery as to which of two factions of Korean United Presbyterian Church was entitled to the use and enjoyment of the Church property?

B. Did the trial court err when it failed to address the issue of corporate control and governance of the plaintiff nonprofit corporation and failed to conclude, as a matter of law, that seizure of this corporation by Rev. Woo and his followers was unlawful and that their actions taken in the corporation's name were without corporate authorization and invalid?

C. Did the trial court misapply the principles of Corporations Code section 9142 and *Protestant Episcopal Church v. Barker, supra*, 115 Cal.App.3d 599 when it found no enforceable trust as to the Church property for the use and benefit of PCUSA?

As discussed hereafter, we find that the superior court committed errors of law in all three instances.

V.

DISCUSSION

A. The Legal Principles Applicable to Church Property Disputes

In early 1981, the California Court of Appeal for the Second Appellate District filed its opinion in *Protestant Episcopal Church v. Barker, supra*, 115 Cal.App.3d 599, certiorari denied 454 U.S. 864, containing not only the latest, but the most definitive appellate consideration of the legal principles concerning church property disputes in California.

The *Protestant Episcopal* case arose as a result of a doctrinal controversy within the Protestant Episcopal Church in the United States of America involving, among other things, the ordination of women as priests. Four Los Angeles Episcopal churches seceded from their regional and national affiliation with the Episcopal Church, but retained possession and control over local church property which stood in the names of local church nonprofit corporations. The national denomination brought four separate actions to obtain title and possession of the property of the seceding churches. The issue in each case was simply whether the local church organization was entitled to keep its church property standing in its own name, or whether it was to surrender the property to the regional or national church organization as property held in trust for the general church membership. (*Id.* at pp. 604-605.) There was no issue of schism within any of the four congregations and no question about control of the nonprofit corporations which held title.

The Court of Appeal surveyed and analyzed three alternative theories – hierarchical, implied trust and express trust – which courts have historically applied to resolve disputes involving church property and focused its analysis through the utilization of three recent appellate opinions. (*Id.* at pp. 611-624.)

The first was *Presbyterian Church v. Hull Church* (1969) 393 U.S. 440, where the United States Supreme Court held that the First Amendment bars a civil court from adjudicating church property litigation through its own resolution of controversies over religious doctrine, practice or polity in the following language:

“[T]he First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes. It is obvious, however, that not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment. Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And there are *neutral principles of law, developed for use in all property disputes*, which can be applied without ‘establishing’ churches to which property is awarded. But First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice.” (*Id.* at p. 449.) (Emphasis added.)

The second opinion cited by the Court of Appeal was the more recent, and latest, United States Supreme Court case in this area, *Jones v. Wolf* (1979) 443 U.S. 595. The issue there, similar to that in the instant case, was which

faction of a previously united congregation was entitled to possess and enjoy church property. The Court described the legal question as "whether civil courts, consistent with the First and Fourteenth Amendments to the Constitution, may resolve the dispute on the basis of 'neutral principles of law,' or whether they must defer to the resolution of an authoritative tribunal of the hierarchical church." (*Id.* at p. 597.) The majority opinion expressly approved the use of neutral principles of law with this discussion:

"The primary advantages of the neutral-principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity. The method relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice. Furthermore, the neutral-principles analysis shares the peculiar genius of private-law systems in general – flexibility in ordering private rights and obligations to reflect the intentions of the parties. Through appropriate reversionary clauses and trust provisions, religious societies can specify what is to happen to church property in the event of a particular contingency, or what religious body will determine the ownership in the event of a schism or doctrinal controversy." (*Id.*, at p. 603.) The majority also noted, however, that separating civil from ecclesiastical issues in church disputes is a difficult task, and warned civil courts not to intrude into ecclesiastical matters in the following language:

"Most importantly, the First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice. [Citations.] As a corollary to this commandment, the Amendment requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization." (*Id.*, at p. 602.)

The conclusion to be drawn from *Jones* is that a state court may resolve disputes over church property through use of neutral principles of law, focusing on sources such as deeds to church property, articles of incorporation, bylaws, state statutory law and the constitution and rules of the general church; but if the civil court is required to resolve a religious controversy, it must then defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body.

The third opinion focused on by the Court of Appeal in the *Protestant Episcopal Church* case was *Presbytery of Riverside v. Community Church of Palm Springs* (1979) 89 Cal.App.3d 910, which was decided before the opinion in *Jones*. In *Presbytery of Riverside*, the California Court of Appeal accepted the United States Supreme Court's invitation to resolve church property disputes through application of neutral principles of law. In that case, a local church, which had incorporated a nonprofit corporation to hold title to its church property, withdrew from the national denomination. The denomination sued to obtain ownership and possession of the local church property, relying almost solely on rules of the general church providing that whenever a local church was formally dissolved or abandoned, its property was to revert to the

denomination. Applying what it considered to be "neutral principles," the Court rejected the contention that property of a local church which is part of a general hierarchical church is, as a matter of law, held in trust for the benefit of the general church. (*Id.* at pp. 925-929.) Focusing instead on bare title to the property, the court upheld the trial court's ruling that ownership and possession of the disputed church property remained with the local church. (*Id.*, at pp. 923, 933.)

However, at the same time, the court affirmed long established California precedent that "'whenever the questions of discipline or of faith, or ecclesiastical rule, custom or law have been decided by the highest . . . church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them.'" (*Id.*, at p. 919.) According to the court, "'First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice.'" (*Id.* at p. 920.)

Relying on principles articulated in these three opinions, the Court of Appeal, in *Protestant Episcopal Church v. Barker, supra*, 115 Cal.App.3d 599, 611-620, held that the hierarchical and implied trust theories were inconsistent with the precept of neutral principles of law as a basis for resolution of church disputes. The court approved the third theory, that of express trust, which "relies on title deeds, articles of incorporation, canons and rules of the organizations concerned and statutes, to establish that a local church holds property under an express trust for the

benefit of the general church membership as embodied in its regional and national organizations." (*Id.* at p. 606.)

B. The Superior Court Erred in Failing to Hold That The True Korean United Presbyterian Church, As Identified by Presbytery, Was Entitled to The Church Property.

The superior court's conclusion that the plaintiff non-profit corporation "is the owner of and entitled to the entire beneficial interest in, and possession of, each of the parcels of the subject real property," stopped short of addressing two key issues in this case. The key issues are: (1) for whose benefit does the corporation hold such property interest, and (2) who controls the corporation? Nevertheless, the court's judgment left Rev. Woo and his faction in possession of the Church property and in apparent control of the corporation. Thus, in rendering its judgment, the court, in effect, substituted its own judgment for the previous determination made by Presbytery on a matter of religious doctrine and polity – the identity of the true Church congregation. On this point, the court erred as a matter of law. The court also erroneously disregarded defendants' contention, and the undisputed evidence in the record that supports it, that control of the nonprofit corporation had been unlawfully obtained. Under neutral principles of law applicable to the governance of nonprofit corporations, the only valid and lawful actions of the corporation have been those which seek to return possession of the Church property to the true Church congregation.

1. The decision of the superior court violates the First and Fourteenth amendments by substituting the court's Judgment for the Judgment of Presbytery regarding the identity of the particular church entitled to use and enjoy the Church property, a question of church doctrine and polity.

While the opinions in *Presbyterian Church, Jones, Presbytery of Riverside*, and *Protestant Episcopal Church* support the use of neutral principles of law to resolve church property disputes, they also mandate that on ecclesiastical issues, including matters of religious doctrine or polity, civil courts must defer to the highest judicatory of the hierarchical church hearing and addressing the matter.

PCUSA is a denomination with a hierarchical polity. The church is governed with rising tiers of authority, the lower being subordinate to the higher; this is clearly shown by the following portions of the Book of Order:

"A higher governing body [i.e., PCUSA] shall have the right of review and control over a lower one and shall have power to determine matters of controversy upon reference, complaint or appeal;

"The nature of Presbyterian order is such that it shares power and responsibility. The system of governing bodies, whether they have authority over one or many churches, sustains such mutual relationships within the structures as to express the unity of the church."

Further, under the Book of Order, the identity of a particular church in PCUSA is a matter of both religious practice and government:

"A particular church consists of those persons in a particular place, along with their children, who profess faith in Jesus Christ as Lord and Savior and who have been gathered for the service of God as set forth in Scripture, subject to a particular form of church government.

"Each particular church of the Presbyterian Church (U.S.A.) shall be governed by this Constitution."

It has long been the law in California that the identification of a religious body as the true church is an ecclesiastical issue. (See *Presbytery of Riverside v. Community Church of Palm Springs*, *supra*, 89 Cal.App.3d at p. 922, citing *Horsman v. Allen* (1900) 129 Cal. 131, 135.) In *Wheelock v. First Presb. Church* (1897) 119 Cal. 477, a church congregation divided into two factions, with one faction petitioning the governing Presbytery to divide the congregation into two and to make an equitable division of a fund of money accumulated to purchase new church property. The Presbytery did so, and the Court upheld the action, indicating that the division of the church into two congregations was an ecclesiastical matter:

"But the ecclesiastical court known as the Presbytery had the power to deal with the First Presbyterian Church in all matters ecclesiastical. The church as an ecclesiastical body was under the absolute control and dominion of the Presbytery, and the decisions and decrees of that body were as binding upon it as the decisions and decrees of this court are binding upon inferior judicial tribunals. Those decrees are not only binding upon the church as an ecclesiastical body, but they are *binding and*

conclusive upon courts wherever and whenever material to pending litigation." (Emphasis added.) (*Id.* at p. 482.)

The principal purpose of the legal action in *Horsman v. Allen*, *supra*, 129 Cal. 131, was to determine the respective rights of parties to the use and control of two tracts of lands. The determining question was which of two sets of trustees elected by religious bodies, both claiming to represent the true church, was entitled to the property:

"The sole question, therefore, is as to the identity of the church. If the radical is the true church, the plaintiffs are entitled to recover; otherwise not." (*Id.*, at p. 135.) For the answer to this question, the Supreme Court deferred to the decision made by the highest judicatory in the denomination. (See also *Presbytery of Riverside v. Community Church of Palm Springs*, *supra*, 89 Cal.App.3d at p. 922, where the court called this question in *Horsman*, "clearly ecclesiastical.")

These California decisions are consistent with the constitutional mandate of the United States Supreme Court that civil courts may not overrule actions of authorities of hierarchical denominations with respect to matters of church polity.

In *Kedroff v. St. Nicholas Cathedral* (1952) 344 U.S. 94, the Supreme Court held that a New York state court could not constitutionally substitute its judgment for the judgment of the Moscow-based authorities of the Russian Orthodox Church with respect to which church official was entitled to occupy and to control the use of Saint Nicholas Cathedral in New York City. (See also *Kreshik v. St. Nicholas Cathedral* (1960) 363 U.S. 190, [The state may not by legislation transfer hierarchical control of a

denomination, and thus control over church property, from one group to another.])

Also, in *Serbian Eastern Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696, the Supreme Court held that the Illinois Supreme Court could not constitutionally substitute its judgment for the judgment of the Holy Assembly of Bishops and the Holy Synod of the Serbian Orthodox Church with respect to who was to be the bishop of the American-Canadian Diocese with control over the diocesan property, and concluded as follows: "In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them." (*Id.* at pp. 724-725.)

In the instant case, the Book of Order provides that where a schism exists within the membership of a particular church and no reconciliation or division is possible, "the presbytery shall determine if one of the factions is entitled to the property because it is identified by the presbytery as the true church."

The trial court correctly concluded that Presbytery, in accordance with the Book of Order, had made such a determination, but then failed to defer to that decision. Presbytery had determined that the faction which was excluded from the property and now gathers at Emmanuel Presbyterian Church is the "true church," but

the trial court substituted its own judgment for that of the Presbytery by leaving Rev. Woo and his faction in possession of the church property.

It is immaterial that the faction which Presbytery has designated as the true church is a minority of the original membership. The Book of Order says that the "determination does not depend upon which faction received the majority vote within the particular church at the time of the schism."

In *First English E.L. Church v. Dysinger* (1932) 120 Cal.App. 139, a schism arose within the congregation, resulting in conflicting claims to the church's property. The majority of the members, the former officials of the church and the pastor claimed the right to hold the church property as against the minority and higher governing bodies of the denomination. The appropriate hierarchical judicatory rendered an opinion in favor of the minority members of the congregation, and the Court of Appeal declined to review that decision of the authorized tribunals of the church or to substitute its own. In so concluding, the Court found it "immaterial whether the plaintiffs constitute a large or small minority of all the members of the church, . . . " (*Id.* at p. 148.)

The Presbytery was the authoritative ecclesiastical body charged with the responsibility of determining which of the two factions of KUPC was the "true church." It did so, and its decision became binding and conclusive on the trial court. On this basis alone, the congregation designated by Presbytery as the true church became entitled to the use and enjoyment of the Church property. Thus, the trial court erred in denying the relief sought in

the defendants' cross-complaint, which asked for restitution of the property for the true congregation and ejection of Rev. Woo and his faction.

2. Under neutral principles of law, the trial court was required to conclude that the obtaining of control of the non-profit corporation was unlawful and that the non-profit corporation's only valid actions have been those seeking to return possession and use of the Church property to the true church congregation.

Having first erred by disregarding the First Amendment mandate to defer to Presbytery's determination regarding the true Church congregation entitled to possession of the church property, the trial court compounded the error by proceeding to make its own determination and failing to apply neutral principles of corporate governance to the undisputed facts before it.

The California Nonprofit Religious Corporation Law (Corp. Code, §§ 9110 et seq.) requires that the activities and affairs of a religious nonprofit corporation, like KUPC, be conducted and its corporate powers exercised under the direction of its board, subject to the provisions of the Corporations Code and to "any provision in the articles or bylaws." (Corp. Code, § 9210.) The articles and bylaws of a corporation constitute rules of law adopted for its internal governance " 'to regulate the conduct and prescribe the rights and duties of its members towards itself and among themselves in reference to the management of its affairs.' " (*Olinco v. Merle Norman Cosmetics, Inc.* (1962) 200 Cal.App.2d 260, 267.)

For religious nonprofit corporations, bylaws may partly be prescribed by, and may be an important tie to, a related superior or affiliated religious organization. The definition of the term "bylaws" as used in the Religious Nonprofit Corporation Law includes "the code or codes of rules used, adopted, or recognized for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated." (Corp. Code, § 9150, subd. (a).) One commentator described this provision of the Religious Nonprofit Corporation Law as follows:

"This approach in the Religious Corporation Law is designed specially to permit bylaws of a religious corporation to include other types of rules and regulations to be found in various religious documents such as canons, constitutions, or rules of other religious bodies; church traditions if sufficiently ascertainable; rules of a religious superior; and similar sources." (1B Ballantine & Sterling's Cal. Corporation Law (4th ed. 1990) § 418.04, at p. 19-493.)

When plaintiff nonprofit corporation was formed in 1945, its articles of incorporation made clear that it would be "at all times subject and adhere to the doctrines and discipline of the Presbyterian Church in the United States of America [now PCUSA]," and that its membership would be determined in accordance with such "doctrines and discipline." With these provisions, the articles tied governance of the plaintiff corporation directly to the constitution of PCUSA and its Book of Order, setting forth the form of government for the Church. Article 62 of the corporation's bylaws made that tie even stronger

by expressly designating the Book of Order and the *Presbyterian Law for the Local Church* as rules of governance for any matters not otherwise provided in the bylaws. Clearly, the plaintiff corporation, like the church congregation for which it serves as agent in temporal affairs, has been subject to the rules of government set forth in the Book of Order.

In accordance with both the corporate bylaws and the Book of Order, the KUPC session, as the governing body of the Church congregation, also serves as the board of the nonprofit corporation; and the moderator of session serves as chair of the corporate board. Under the bylaws and the Book of Order, the session is empowered to conduct all the administrative and business affairs of the corporation; the membership of the congregation is empowered only to elect officers, call a new pastor, fix the terms of a pastoral call or buy, mortgage, or sell real property. Without its moderator or chair in attendance, neither the session nor the congregation has the power to conduct meetings or to engage in the corporation's business; the moderator possesses exclusive authority to convene, conduct and moderate over lawful meetings of the session or the congregation. Under the bylaws and the Book of Order, the business to be transacted at a special meeting of the congregation is limited to items specifically listed in the call for the meeting, and under the Book of Order, meetings of the congregation can be called only by the session or Presbytery.

At its regular meeting in June 1988, the KUPC session acted to recommend to the congregation that the session be expanded to nine members. The session called a special meeting of the congregation to amend the corporate

bylaws to increase the size of the board and to vote the election of new elders for those positions. No other items appeared on the notice or agenda of the meeting.

The July 31, 1988, special meeting of the congregation did not occur as noticed. Rev. Morrison, the moderator of session, was not permitted to conduct or moderate the meeting; he was asked to leave. Rev. Woo and his faction supplanted Rev. Morrison, but their actions had no authority under the articles, bylaws or Book of Order. A moderator may be replaced in only limited circumstances, none of which were present at KUPC's congregational meeting of July 31, 1988, and none of which include coercion.

No further meetings of the session or the congregation occurred between July 31, 1988, and November 8, 1988, when Presbytery, by vote of its members, elders (laypersons) and other pastors, removed Rev. Woo as pastor of the church,⁴ removed the old session, appointed a new administrative commission and empowered that commission to act in all respects as the session of the Church. With that action, Rev. Woo's relationship with KUPC was terminated and any continuing authority of the old session came to an end. Since that date, the new session has acted as the duly constituted corporate board and has undertaken remedial steps to remove Rev. Woo and his faction from the Church property and to restore

⁴ Under the Book of Order, a church pastor is a member of the presbytery which calls him to serve a congregation; he is not a member of the congregation itself; and his relationship with the congregation is dependent on approval of Presbytery and his adherence to the Book of Order.

the Church property to the use and benefit of the true congregation.

KUPC's session never authorized the complaint in this action. None of the actions taken by Rev. Woo and his faction, beginning with the removal of Rev. Morrison as moderator of the congregational meeting in July 1988, and including the retention of counsel to sue the Presbytery and PCUSA, the initiation of this lawsuit and the effort to refinance the Church property, was ever authorized by the session. All such actions are therefore invalid. The only valid actions were those taken by the new session after November 8, 1988, including its decision to return possession and use of the Church property to those determined by Presbytery to be the true congregation.

It is immaterial that Rev. Woo and his faction purported to amend the corporate bylaws in March 1989 to break the Church corporation's ties to the rules of governance set forth in the Book of Order. They had no authority to take these steps. Firstly, four months earlier, in December 1988, Rev. Woo had resigned from Presbytery, renounced the jurisdiction of PCUSA over him and persuaded his followers to vote to leave PCUSA. At that moment, if not before, these members had renounced any further obligation to be subject to the doctrines or discipline of PCUSA, and, in effect, renounced their membership in the plaintiff nonprofit corporation, since its articles of incorporation required adherence to the doctrines and discipline of PCUSA as a condition of membership. Having abandoned their membership in the plaintiff corporation, they lost all power and ability to determine its future status. Secondly, no meeting of the session of

congregation was validly called or conducted to consider such action. Thirdly, under the Book of Order, the relationship of a particular church to PCUSA can be severed only by action on the part of Presbytery.

For these reasons, the Court erred when it failed to apply "neutral principles" of nonprofit corporation law to find (1) that the obtaining of control of the plaintiff corporation by Rev. Woo and his faction was unlawful, (2) that the prosecution of this lawsuit by Rev. Woo and his followers on behalf of the corporation has been invalid, (3) that the new session appointed by Presbytery on November 8, 1988, is in lawful control of the corporation and (4) that the actions of the new session to return the Church property to the true Church congregation should be enforced judicially.

C. The Trial Court Erred in Failing to Find That The Church Property Was Held in Express Trust, for The Use And Benefit of The Denomination, Which Has Determined That The True KUPC Congregation Shall Continue to Use The Property

The judgment below is reversible on either of the grounds discussed above, either of which would return possession and use of the Church property to the true KUPC congregation. Additionally, neutral principles of law compel the conclusion, as a matter of law, that the Church property was held in trust for the use and benefit of PCUSA, which through action of Presbytery has determined that the true KUPC congregation shall have the use and enjoyment of the Church property. The trial court

erroneously misapplied the neutral principles of property law applicable to this case.

When the Court of Appeal, in *Protestant Episcopal Church v. Barker, supra*, 115 Cal.App.3d 599, decided to apply neutral principles of law to resolve the church property disputes before it, it identified and discussed "four general sets of facts" for determining the presence or absence of an express trust in church property.

The first set of facts looks to the deed and title to the *deed and title to the property*. Pertaining to this factor, the Court simply noted that where the local body holds property in its own name, without more, the national body may have little basis to claim that the property is held in trust and cited Evidence Code section 662 and Civil Code section 1105. (*Id.*, at pp. 621-622.)

The second set of facts involves the *articles of incorporation and other organizational documents* of the local church. Here, the court noted that where the organizational documents show that a church is incorporated and identified as an integral part and a subordinate body of a national denomination, neutral principles of law may dictate that it hold its property in trust for the national body. (*Id.* at pp. 622-624.)

The third set of facts deals with the *constitution, canons and rules of the general church*. Here, the court stated that where the governing rules of a national body expressly provide that a local church holds its property in trust for the benefit of the general church, it will give deference to those provisions. (*Id.* at p. 624.)

Indeed, a few years earlier, the United States Supreme Court in *Jones v. Wolf*, *supra*, 443 U.S. 595, had invited religious denominations to add such language to their Constitutions to ensure that civil courts would rule uniformly on property disputes in which a particular local church might find itself embroiled by stating that: "At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church. The burden involved in taking such steps will be minimal. And the civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form." (*Id.* at p. 606.)

The fourth set of facts in *Protestant Episcopal* arises from *California statutory law*. Here, the court looked particularly to California Statutes 1939, chapter 148, page 1262, which, for the first time in California, authorized the incorporation of a subordinate body to a national body and provided that whenever the charter of the subordinate body is surrendered to, taken away or revoked by the national body granting it, the property of the subordinate body is to be delivered to the national body and disposed of in accordance with the laws of that body. (*Protestant Episcopal v. Barker*, *supra*, 115 Cal.App.3d at p. 624.) The Court stated that if a church incorporated after 1939 makes a specific statement in its articles of incorporation about the church's relationship to a

national church, then "under neutral principles of law reference to these statutory provisions is relevant to any determination of express trust." (*Ibid.*)

Applying "the four general sets of facts" to the circumstances surrounding the four local Episcopal churches which were parties to the *Protestant Episcopal Church* appeal, the Court of Appeal concluded that no express trust was created in the property of three of the churches which "held title to their property in their own names, paid for it out of their own funds, did not alienate it in any express manner in their articles of incorporation, and did not subject themselves to express restraints on their property by reason of the constitution, canons, and rules of PECUSA and the Diocese." (*Id.* at p. 625.) However, the Court found that the fourth church, Holy Apostles, *did* hold title to its property subject to an express trust in favor of the Diocese, since that church was specifically identified in its articles as a subordinate body of the national body and the Diocesan canon declared that on dissolution of a church, its property should revert to the Diocese. (*Id.* at pp. 625-626.)

Since *Protestant Episcopal Church*, there have been no further California appellate or United States Supreme Court opinions dealing with the "neutral principles" applicable to church property disputes. However, the California legislature has taken action. In an effort to bring greater clarification to the question of when assets of a religious corporation are impressed with a trust for the general purpose of the denomination, the legislature amended Corporations Code section 9142, effective January 1, 1983, to provide presumptive rules for religious trusts. (Stats. 1982, ch. 242, § 1, p. 784; See 1B Ballantine &

Sterling's Cal. Corporation Law, *supra*, § 418.01[3][c] at p. 19-476.) Corporations Code section 9142, subd. (c)(2) now provides that a trust is presumed in religious assets "to the extent that, the articles or bylaws of the corporation, or the governing instruments of a superior religious body or general church of which the corporation is a member, so expressly provide." (Emphasis added.)

1. Corporations Code section 9142, subdivision (d) creates a presumption of a trust in the Church property.

Plaintiff nonprofit corporation was incorporated as an integral part and as a subordinate body of the Presbyterian Church in the United States of America, which later became PCUSA. Its articles recite that the corporation "shall be at all times subject and adhere to the doctrines and discipline" of PCUSA; its bylaws memorialize the Church's membership in the Presbytery, a part of PCUSA; and its bylaws require that the corporation conduct itself in accordance with the Book of Order.

According to appellant, after the United States Supreme Court made its decision in *Jones v. Wolf*, *supra*, 443 U.S. 595, PCUSA determined that it would follow the majority opinion's invitation and expressly state in the Book of Order its traditional understanding of the nature of ownership of church property in a manner that civil courts would follow. In 1981, the General Assembly adopted the amendments now set forth in Chapter VIII, entitled *The Church and Its Property*:

"All property held by or for a particular church, a presbytery, a synod, the General Assembly, or the Presbyterian Church (U.S.A.), whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether the property is used in programs of a particular church or of a more inclusive governing body or retained for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.)."

These provisions were carried forward into the Book of Order at the reunion of the United Presbyterian Church in the United States of America and the Presbyterian Church of the United States, to form the new PCUSA. This new Book of Order was enacted by vote of all PCUSA presbyteries, 52 to 8, with Presbytery of the Pacific, of which KUPC was a member, voting in favor. The Presbytery's affirmative ballot resulted from an earlier vote of the members of the Presbytery, pastors and elders in equal number, including the pastor and an elder of KUPC. Rev. Woo and elders of KUPC regularly participated in meetings of the Presbytery. Further, Rev. Woo was familiar with the Book of Order provisions regarding property and recognized the impact they had on property held by KUPC.

The trial court erred in its failure to apply Corporations Code section 9142, subdivision (c)(2) to the facts of this case. In determining the presence or absence of a trust in the Church property, the trial court erred by not applying the presumptive rules in section 9142, subdivision (c)(2) that the property was held in trust for the use and benefit of PCUSA.

2. The title and deeds support a finding of a trust.

Consideration of the "four general sets of facts" articulated by the Court in *Protestant Episcopal Church* to the facts of this case, extends the presumption provided in section 9142, subdivision (c)(2) to a clear finding of an express trust. The trial court misapplied these four factors to the undisputed facts of this case. The court improperly looked at each of the factors separately to see if an express trust was present in any one of them. However, the court, as a matter of law, should have looked at these factors collectively, asking whether under the totality of the circumstances, they required a finding of express trust.

On the first of these factors – title and deeds to the Church property – the trial court erroneously ignored the undisputed fact that title to two of KUPC's lots had been held solely in the name of the Presbytery since 1936 and 1937. At one point in its decision, the court suggested that these lots were held by Presbytery as part of the 1983 loan transaction. In fact, these two lots were not the subject of plaintiff's 1983 grant deed to Presbytery in connection with the \$200,000 loan transaction because title had already been held by the Presbytery for almost 50 years. The fact that it has held title for 50 years is a factor which supports a finding of express trust, particularly in light of the other factors discussed below.

In considering this factor, the trial court apparently gave no weight to the long history of the Church as part of PCUSA. The court discounted the fact that the property had been held in the name of the Presbytery for over 50 years on the ground that "there simply is no doubt

whatsoever but that it was always the intention of all the parties that the subject land be owned and occupied by a Korean Presbyterian Church." The record is devoid of evidence that the parties always intended the property to be used and occupied by "a" Korean Presbyterian Church; all the evidence pointed to "the" Korean United Presbyterian Church, a member church of PCUSA. The entire history of these properties supports this conclusion.

3. The articles and bylaws support a finding of a trust.

The trial court concluded, as a legal matter, that the corporate articles and bylaws of KUPC "contain no provision of express trust." However, the *Protestant Episcopal Church* opinion does not require that there be a "provision of express trust" in those documents; the Court of Appeal looked to those documents only as one of the facts that could support a finding of express trust. In the case of KUPC's articles and bylaws, that support is clear and persuasive.

Plaintiff's articles of incorporation recite that the corporation "is organized under the provisions of Article I, of Title XII, of Part IV, of Division First, of the Civil Code of the State of California," which, in 1945, was California's nonprofit corporation law. This portion of the Civil Code included section 605dd, which provided as follows:

"Whenever the charter of a subordinate body which has been incorporated pursuant to the provisions of this article is surrendered to or taken away or revoked by the head or national body granting it, the subordinate body

shall dissolve and the property of and obligations owed to the subordinate body shall be delivered to the head or national body and disposed of in accordance with the laws of the head or national body. . . . "

Section 605dd was enacted as part of the same statute (i.e., Stats. 1939, ch. 148, § 2, p. 1262) that the Court relied upon in *Protestant Episcopal Church* to find an express trust in the property of Holy Apostles Church.

In its statement of decision, the trial court pointed to section 9132 of the Corporations Code, which, it noted was "formerly section 9301 enacted 1947 and amended 1949." The trial court concluded that those sections *permitted* the "Articles of Incorporation of a subordinate corporation instituted or created under the authority of a head organization" to provide for the distribution of assets to the head organization in the event of dissolution of the subordinate body; and that such a provision, to be effective must be *expressly provided* in the articles. The court found no such express provision in KUPC's articles and concluded that this was "very significant in defeating any claim of an express trust."

But KUPC was incorporated in 1945, before Corporations Code sections 9132 or 9301 were enacted or amended. In 1945, the law regarding nonprofit subordinate bodies was found in Civil Code sections 594.5, 605dd and 605e. (Stats. 1939, Ch. 148, §§ 1 & 2, pp. 1262-1263.) The statutory law in 1945 did not require that such provisions be expressly provided in the articles; rather, such provisions were self-executing, and KUPC's reference to them in its articles of incorporation was all that was required to invoke their application to KUPC.

Furthermore, the facts of this case are analogous to the "set of facts," as articulated in *Protestant Episcopal Church v. Barker, supra*, 115 Cal.App.3d at p. 623, where one of the four churches, Holy Apostles, was "identified both as an integral part and as a subordinate body of" the national denomination. Indeed, the language of plaintiff's organizational documents in this case does exactly the same thing. The articles recite that the corporation will be subject to the doctrines and discipline of PCUSA, and the bylaws recite that the corporation is part of Presbytery.

4. The PCUSA constitution supports a finding of trust.

At the time this dispute arose, the Book of Order of PCUSA provided that church property was held in express trust, for the use and benefit of PCUSA. This factor also supports a finding of express trust.

The trial court, however, circumvented the clear expression of the Book of Order and found no evidence that the Book of Order contained such provisions when the Church was organized in 1906, when it acquired land in 1937 or when it was incorporated in 1945. In reaching this conclusion, the trial court overlooked two critical points.

Firstly, the United States Supreme Court, in *Jones*, invited the very type of provision now found in the Book of Order. Here, the amendments adding the trust language to the Book of Order were made several years before the dispute at bench erupted; further, the amendments are reflected in a "legally cognizable form" – in fact, they are reflected in precisely the kind of document

to which Corporations Code section 9150, subdivision (a) refers in its definition of corporate "bylaws."

Secondly, the trial court failed to recognize that, in a hierarchical church such as PCUSA, where authority rises in a series of elected governing bodies from the session, through presbytery to the General Assembly, the elders and pastors of member churches vote upon and eventually enact amendments to the Book of Order. KUPC participated in the Presbytery's deliberations about these particular amendments, and Presbytery voted in favor of these provisions when they were enacted into the Book of Order at the reunion which formed PCUSA.

5. State statutes support finding of a trust.

The fourth factor mentioned in the *Protestant Episcopal Church* case is state statutory law. In the instant case, the plaintiff corporation was incorporated with reference given to the exact statutory provisions referred to in the articles of the Holy Apostles Church. Further, since *Protestant Episcopal Church* Corporations Code section 9142 has been amended, and as discussed above, it adds further support to a finding of an express trust.

DISPOSITION

The judgment is reversed and remanded with directions to enter judgment (a) denying plaintiff's claims to quiet title to the Church property and for declaratory relief, (b) restoring possession and use of the Church property to the true Church congregation as designated by Presbytery, (c) directing through a writ of possession

that Rev. Woo and his faction be removed from the premises and (d) declaring that the plaintiff corporation's right, title and interest in the Church property is held in trust for the use and benefit of PCUSA, subject to the direction of Presbytery. Appellants to recover costs on appeal.

CERTIFIED FOR PUBLICATION.

WOODS (Fred), J.

We concur:

LILLIE, P.J.

JOHNSON, J.

OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
ROBERT N. WILSON, CLERK

DIVISION: 7 DATE: 06/19/91

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RE: Korean United Presbyterian Church
vs.
Presbytery of the Pacific Etc.
2 Civil B048755
Los Angeles NO. C706927

THE COURT:
Petition for rehearing denied.

App. 110

Second Appellate District, Division Seven,
No. B048755 S021809

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

IN BANK

(Filed Aug. 29, 1991)

KOREAN UNITED PRESBYTERIAN CHURCH OF
LOS ANGELES, Respondent

v.

PRESBYTERY OF THE PACIFIC, Etc. Et Al., Appellants

Respondent's petition for review DENIED.

LUCAS

Chief Justice



Supreme Court, U.S.
FILED
DEC 27 1991
OFFICE OF THE CLERK

2

No. 91-879

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1991

KOREAN UNITED PRESBYTERIAN
CHURCH OF LOS ANGELES,
Petitioners,

vs.

PRESBYTERY OF THE PACIFIC; SYNOD OF
SOUTHERN CALIFORNIA AND HAWAII;
AND PRESBYTERIAN CHURCH (U.S.A.),
Respondents.

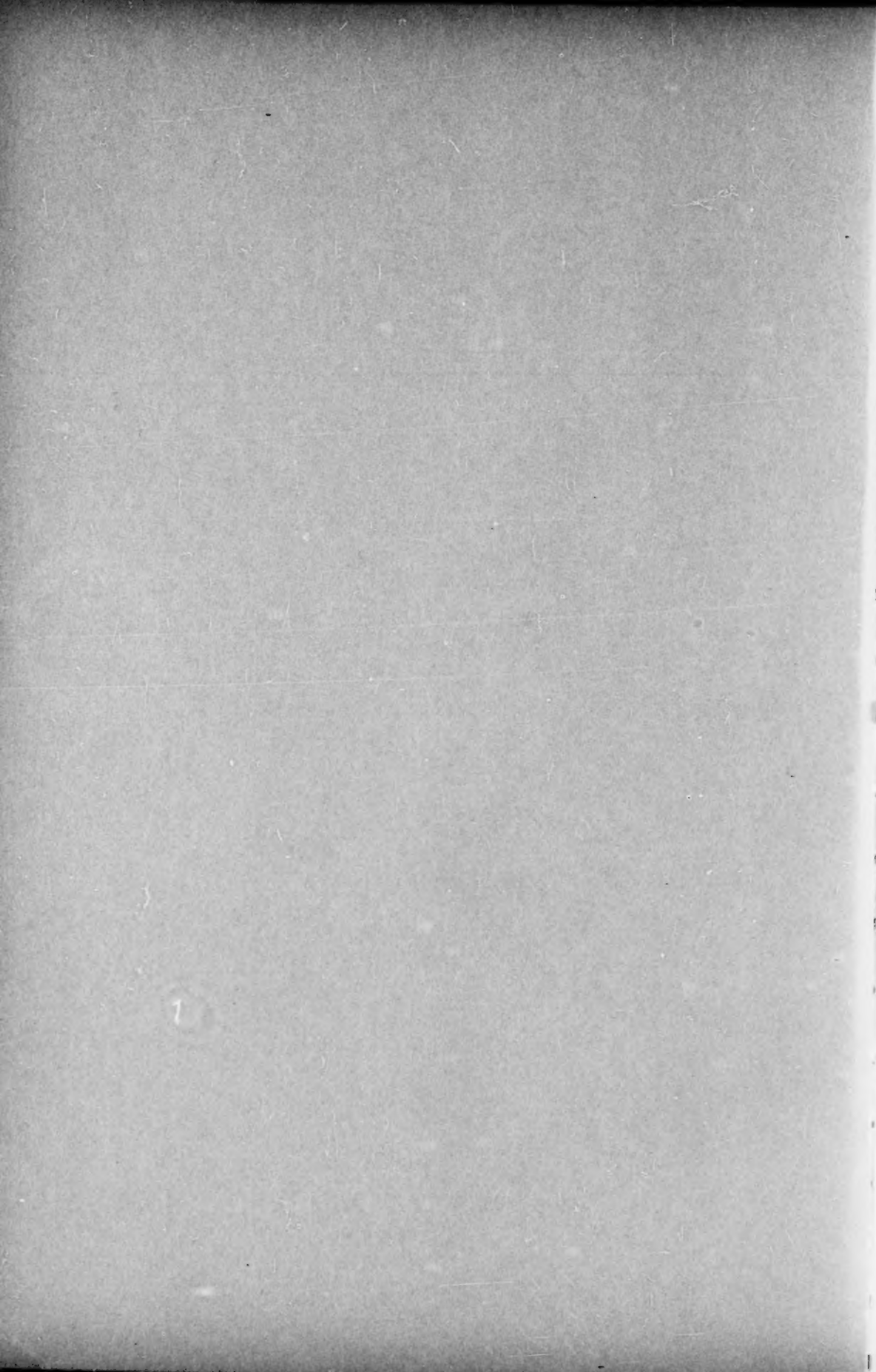
**On Petition for Writ of Certiorari
to the Court of Appeal of the State of California,
Second Appellate District, Division Seven**

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Does the First Amendment dictate the details of the content of state law applicable to church property disputes, or does it simply establish certain constitutional boundaries and otherwise leave the choice of applicable law to the States?

2. Should this Court overrule or reconsider *Jones v. Wolf*, 443 U.S. 595 (1979), and its predecessor decisions?

3. Does the decision of the California Court of Appeal rest on independent state-law grounds, aside from any assertedly improper deference to ecclesiastical authorities on ecclesiastical issues?

LIST OF PARTIES¹

Petitioners' statement that the parties below are those represented in the caption is incorrect in two respects.

First, the petition purports to identify Petitioners as the Korean United Presbyterian Church of Los Angeles ("KUPC"), which is a California nonprofit religious corporation. In fact, however, the persons bringing this petition are one of two rival factions claiming to be KUPC. The court below held, based on uncontested facts and state law, that Petitioners are not in truth the true KUPC; that entity is actually represented by the rival faction loyal to Respondents, judicatures in the national denomination known as Presbyterian Church (U.S.A.). The court below also held that KUPC had never authorized this litigation. App. to Pet. for Cert. at 92-97. The precise identity and juridical status, if any, of Petitioners is not stated. Petitioners' characterization thus assumes the conclusion (at best) that it is the true representative of KUPC or flatly misstates (at worst) the true identity of the parties.

Second, the petition does not reflect that Sang Bom Woo, the leader of Petitioners' faction, was a cross-defendant below. Since Rev. Woo has not timely petitioned for certiorari, the judgment below remains binding on him.

¹Pursuant to Supreme Court Rule 29.1, there are no parent or subsidiary companies required to be listed for any of the Respondent nonprofit corporations.

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No. 91-879

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1991

KOREAN UNITED PRESBYTERIAN
CHURCH OF LOS ANGELES,
Petitioners,

VS.

PRESBYTERY OF THE PACIFIC; SYNOD OF
SOUTHERN CALIFORNIA AND HAWAII;
AND PRESBYTERIAN CHURCH (U.S.A.),
Respondents.

**On Petition for Writ of Certiorari
to the Court of Appeal of the State of California,
Second Appellate District, Division Seven**

RESPONDENTS' BRIEF IN OPPOSITION

Respondents Presbytery of the Pacific, Synod of Southern California and Hawaii, and Presbyterian Church (U.S.A.) ("PCUSA") respectfully urge this Court to deny the petition for writ of certiorari in this case.

STATUTES INVOLVED

In addition to the constitutional provisions stated in the petition, several California statutes are involved in this case. The California Nonprofit Religious Corporation Law is found at Cal. Corp. Code §§ 9110 *et seq.* In particular, § 9142(c)(2) of that Law provides:

(c) No assets of a religious corporation are or shall be deemed to be impressed with a trust, express or implied, statutory or at common law unless one of the following applies:

. . . .

(2) Unless, and only to the extent that, the articles or bylaws of the corporation, or the governing instruments of a superior religious body or the general church of which the corporation is a member, so expressly provide.

STATEMENT OF THE CASE

Petitioners' Statement of the Case is incomplete, argumentative, and inaccurate in several respects. For a complete statement, the Court is respectfully referred to the decision below, App. to Pet. for Cert. at 64-80. In particular, however, the following clarifications are in order.

1. As discussed in the "LIST OF PARTIES" section *supra*, Petitioners have misidentified themselves as KUPC. The California Court of Appeal held on the facts and state law that Petitioners are *not* the lawful representatives of KUPC. App. to Pet. for Cert. at 92-97. This is a disputed issue at best, and a foreclosed contention at worst. At this stage of the proceedings it is unclear just who Petitioners really are, or whether there even is a proper party petitioner before this Court. The only cer-

tainty about the identity of Petitioners is that they do not include Rev. Woo, who was a named party below but who has chosen not to join the petition.

2. Although Petitioner's Statement discusses in detail the holdings of the Los Angeles County Superior Court, it is extremely scanty in its account of the holdings of the judgment actually sought to be reviewed here — that of the California Court of Appeal. The California Court of Appeal concluded that the right to possession of the disputed property lies in the loyal faction of KUPC, not in the breakaway faction represented by Petitioners. It rested its judgment on three independent legal grounds:

(1) The court held that the identification of the faction of the local congregation representing the true KUPC is, under California law, an ecclesiastical question on which the courts must defer to the decision of the highest ecclesiastical authority — in this case, the Presbytery. App. to Pet. for Cert. at 86-92.

(2) The Court also held that based upon its review, according to neutral principles of law, of the relevant corporate documents and state statutes, lawful control of the KUPC nonprofit corporation is vested in the faction designated by the Presbytery and loyal to the PCUSA, and not in Petitioners. *Id.* at 92-97.

(3) Finally, the court held that under state statute it was required to give effect to an express trust provision in the PCUSA constitution — a conclusion further buttressed by the relevant provisions of KUPC's own corporate documents and by the title documents and the intent of the parties. *Id.* at 97-107.

3. Petitioners' Statement contends that "the court below" found that the clear intent of the parties was that the beneficial interest in the property was to be held by KUPC. Pet. for Cert. at 5. The Court of Appeal, however, rejected this proposition as to at least a part of the property, finding instead that the clear intent of the parties was that PCUSA would hold the beneficial interest in the property (even prior to and aside from the express trust provision mentioned, but not quoted, in footnote 1 of the petition). App. to Pet. for Cert. at 103-04.

4. Petitioner's Statement asserts as fact that nothing in KUPC's by-laws indicates an intent that assets revert to PCUSA upon revocation of the charter. Pet. for Cert. at 7. In fact, however, the Court of Appeal held that the by-laws do so provide, because they incorporate the Book of Order (the PCUSA's constitution) which contains the provision in question, and because representatives of KUPC had accepted those provisions. App. to Pet. for Cert. at 104-07.

5. Petitioner's Statement asserts as fact that a majority of the members of KUPC voted to disaffiliate with PCUSA. Pet. for Cert. at 7-8. Again, this is a rejected contention at best. The court below held that, by the time any vote to disaffiliate was taken, these Petitioners were no longer even members of KUPC, and, in any event, that such a disaffiliation is beyond the legal capacity of the membership or session of a local congregation. App. to Pet. for Cert. at 95-97.

6. Petitioner's Statement asserts that KUPC voted to exempt itself from certain provisions of the Book of Order. Pet. for Cert. at 8. As discussed in the preceding paragraph, however, the "vote" referred to was not a

legally valid vote of any members or representatives of KUPC.

REASONS WHY THE WRIT SHOULD BE DENIED

The petition in this case is quite vague and disjointed in attempting to identify what is supposed to be wrong with the decision of the Court of Appeal, and what supposed issues exist that require this Court's attention. As the petition tacitly acknowledges, there is a well-developed and clear body of decisions by this Court on the constitutional principles applicable to church property disputes. Petitioners assert generally that these cases do not provide sufficient "guidance" to state courts. What Petitioners identify as a "lack of guidance", however, is in truth simply the broad latitude accorded to the different States to establish their laws of property ownership as they see fit, subject only to specific First Amendment prohibitions on forbidden topics for adjudication. Petitioners' complaints about the supposed lack of clarity in this field are really nothing more than a mask for their unhappiness with the particular state-law rules that California has adopted and applied in this case. Disagreements with a state court on state law do not establish a proper basis for invoking this Court's certiorari jurisdiction.

Beyond a vague call for "guidance", the only particular constitutional argument sought to be raised by Petitioners is an assertion that the Court of Appeal impermissibly deferred to the decision of the highest judicatory body of the PCUSA as to the identity of its local affiliate church. This assertion fails, however, for two independent reasons. First, the deference accorded by the Court of Appeal in this case was not merely permitted, but affirmatively *required*, by this Court's decisions. And second, the challenged "deference" was but one of three independent,

alternative holdings supporting the judgment below. The other two bases for the judgment did not involve any such element of deference to ecclesiastical decisions; and they were themselves dictated by this Court's holdings. Hence, even if Petitioners' attack on the Court of Appeal's deference to ecclesiastical decisions were otherwise meritorious, it would have no effect on the validity of the judgment sought to be reviewed here.

I. Petitioners' Request For "Guidance" From This Court As To The Content Of "Neutral Principles" Is Merely A Thinly Veiled Disagreement With The Content And Outcome Of California State Law In This Case.

As Petitioners tacitly acknowledge, this Court has handed down a well-established body of case law that thoroughly and clearly lays out the constitutional boundaries that state courts must not cross when they adjudicate church property disputes. *Jones v. Wolf*, 443 U.S. 595 (1979); *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976); *Maryland & Virginia Eldership of Churches of God v. Church of God, Inc.*, 396 U.S. 367 (1970); *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969); *Kreshik v. Saint Nicholas Cathedral of Russian Orthodox Church*, 363 U.S. 190 (1960); *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94 (1952); *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1872).

The petition does not claim to identify any error in any of these decisions. It does not assert any conflict among

them. It does not establish that lower courts have had any particular difficulty understanding or applying them.²

Nevertheless, Petitioners assert that the state courts are in need of detailed “guidance” from this Court as to the content of the “neutral principles of law” that they are permitted to use in determining church property disputes. However, there is an excellent reason why no such detailed guidance is found in this Court’s opinions, — that is, this Court is firmly committed to the idea that such “neutral principles” are a matter of state law, left to the choice of each State. This Court has soundly rejected any such effort to dictate the details, or even the broad outlines, of state law on this topic. Instead, it has wisely been content to set forth the outer boundaries placed by the First Amendment on state law — and to leave each State to establish such law as it thinks best, by statute or judicial decision. So long as the legal precepts adopted by a State do not contravene specific constitutional prohibitions — for example, so long as they do not require or permit state courts to second-guess ecclesiastical authorities as to questions of religious doctrine or church polity — then the First Amendment, and this Court, have nothing further to say about them:

[A] State may adopt *any* one of various approaches for settling church property disputes so long as it

²Petitioners cite four scattered state-court cases as supposed evidence that the application of “neutral principles of law” does not necessarily lead to consistent results. Pet. for Cert. at 13. However, Petitioners fail to point out that each of these cases was decided by a different state court, based on different state statutes and on different underlying facts. The consistency or inconsistency of the results of these cases is merely a reflection of the diversity of state laws and of factual situations that may be encountered. Petitioners do not assert any inconsistency in the *constitutional* analysis used by these courts.

involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith.

Jones, 443 U.S. at 602, quoting *Maryland & Va. Eldership*, 396 U.S. at 368 (1970) (Brennan, J., concurring) (emphasis in original).

For example, *Jones* itself involved an assertion that Georgia was constitutionally required to defer to the decision of a national church authority concerning which of two factions of a local church was the proper owner of the local church's property. The Court held that, although Georgia would certainly have been *permitted* to decide the dispute on the basis of such deference, it was not constitutionally *required* to do so. It could instead invoke "neutral principles of law" such as the law of title and implied or express trust. These neutral principles may be applied to determine the civil ownership consequences of both purely secular documents (such as deeds) and church governance documents (such as church constitutions). 443 U.S. at 602-04. The Court left it up to the Georgia courts on remand to flesh out the details of the "neutral principles" to be applied. *Id.* at 606-10. The Court did note, however, that where state law (or a church document to which state law looks) rests a determination of property rights on religious concepts, such as which local faction represents the "true church," then the courts are constitutionally required to defer completely to the decision of the authoritative ecclesiastical body. *Id.* at 604, 609.

In light of these principles from *Jones*, Petitioners' complaint of lack of "guidance" must be taken in either of two ways. Most boldly, it might be read as an attempt to federalize the entire body of law applicable to church property disputes — that is, to overrule *Maryland & Va.*

Eldership and *Jones*. Petitioners, however, do not avow any such brash enterprise. Nor do they assert any reason why the Court should now consider erecting onto the First Amendment a detailed superstructure of federal constitutional law of property, trusts, deeds, and governance of nonprofit corporations or associations.

Less dramatically, but more credibly, Petitioners' arguments can be interpreted as an attempt to wrap the First Amendment around their disagreements with California law, as applied by the California Court of Appeal in this case. In this regard, Petitioners argue that (1) the court below improperly gave precedence to the PCUSA's Book of Order over the alleged by-laws and articles of the local congregation in determining whether a trust existed (Pet. for Cert. at 7); (2) that the court misconstrued KUPC's by-laws and articles as incorporating pertinent provisions of the Book of Order (*Id.* at 7 & n.2, 15); (3) that certain provisions of the Book of Order permitted the local congregation to opt out of the trust provisions in the Book of Order (*id.* at 7-8); (4) that the court should have given controlling effect to the alleged majority vote of the congregation (*Id.* at 7); (5) that the court failed to resolve the relationship between a governing state statute and common-law rules (*Id.* at 11 & n.3); and (6) that the court looked to the wrong source to determine principles of corporate governance (*Id.* at 14-15). Plainly, these are all questions of California law, based on the particular facts as found in this case. Petitioners may disagree with the Court of Appeal's resolution of these state-law questions; but until *Jones* and its predecessors are overruled, this Court has no basis on which to redetermine them. 443 U.S. at 609.

II. Petitioners' Assertion That The Court Of Appeal Should Have Second-Guessed The Presbytery On A Matter Of Ecclesiastical Law Is Neither Meritorious Nor A Sound Basis For Granting Certiorari.

Aside from their state-law contentions, the closest Petitioners come to asserting any actual constitutional issue in this case is their general, vaguely developed argument that the Court of Appeal erred by refusing to re-examine or overrule the decision of the Presbytery as to which faction of the local congregation constitutes the true KUPC. This Court's settled decisions prove the incorrectness of this argument. Further, Petitioners' criticism could at most affect one of the lower court's three alternative grounds for its judgment.

A. The judgment below rests on three independent grounds.

Notably missing from the petition is any serious discussion of what the Court of Appeal actually held in this case. It rested its judgment on three independent legal grounds:

(1) The court held that the identification of which competing faction of the local congregation represents the true KUPC is, under California law, an ecclesiastical question on which the courts must defer to the decision of the highest ecclesiastical authority — in this case, the Presbytery. App. to Pet. for Cert. at 86-92.

(2) The Court also held that based upon its review, according to neutral principles of law, of the relevant corporate documents and state statutes, lawful control of the KUPC nonprofit corporation is vested in the faction designated by the Presbytery and loyal to the PCUSA, and not in Petitioners. *Id.* at 92-97.

(3) Finally, the court held that under state statute it was required to give effect to an express trust provision in the PCUSA constitution — a conclusion further buttressed by the relevant provisions of KUPC's own corporate documents and by the title documents and the intent of the parties. *Id.* at 97-107.

B. The Court of Appeal's refusal to second-guess the Presbytery's ecclesiastical decision is not only permitted but required by this Court's decisions.

This Court's decision in *Jones* could have been written with this case in mind, so clearly does it dictate the outcome here.³ *Jones*, like this case, involved a decision with respect to which of two competing factions of a local Presbyterian congregation was entitled to ownership of the congregation's physical assets. The Court held that state law may constitutionally look to "neutral principles" to decide the controversy. Importantly, however, the Court expressly warned that a State may not use such neutral principles in a way that involves second-guessing the decision of an ecclesiastical authority on ecclesiastical matters:

[T]here may be cases where the deed, the corporate charter, or the constitution of the general church incorporates religious concepts in the provisions relating to the ownership of property. If in such a case the interpretation of the instruments of ownership would require the civil court to resolve a religious controversy, then the court must defer to the resolu-

³Interestingly, the approach advocated by the dissent in *Jones* would have led just as compellingly to the judgment reached in this case. The four *Jones* dissenters would have required deference to the Presbytery's decision in all circumstances, without reference to "neutral principles". 443 U.S. at 610-21 (Powell, J., dissenting).

tion of the doctrinal issue by the authoritative ecclesiastical body.

443 U.S. at 604: Accordingly, in remanding the case for a determination of state law, the Court reiterated its warning:

[Georgia law] may suggest that the identity of the "Vineville Presbyterian Church" named in the deeds must be determined according to the terms of the Book of Church Order, which sets out the laws and regulations of churches affiliated with the PCUS. Such a determination, however, would appear to require a civil court to pass on questions of religious doctrine, and to usurp the function of the commission appointed by the Presbytery, which already had determined that petitioners represent the "true congregation" of the Vineville church. Therefore, if Georgia law provides that the identity of the Vineville church is to be determined according to the "laws and regulations" of the PCUS, then the First Amendment requires that the Georgia courts give deference to the presbyterial commission's determination of that church's identity.

Id. at 609 (footnotes omitted).

This was hardly a novel holding. The Court's decisions have consistently and emphatically rejected any attempt by the States, acting either judicially or legislatively, to seek to intervene in ecclesiastical decisions about which of two factions or contenders represents the rightful continuation of a religious institution. *Serbian Eastern Orthodox Diocese*, 426 U.S. at 708-715; *Maryland & Va. Eldership*, 396 U.S. at 369-70 (Brennan, J., concurring); *Presbyterian Church*, 393 U.S. at 449-52; *Kreshik*, 363 U.S. at 191; *Kedroff*, 344 U.S. at 119.

Since California, like Georgia, has adopted a "neutral principles" approach to church property disputes⁴, this Court's holding in *Jones* is squarely on point here and clearly dictates the correctness of the California Court of Appeal's decision below. Even according to Petitioners' own theory, the property at issue is equitably owned by KUPC, the nonprofit corporation embodying the local congregation prior to the schism.⁵ Thus, *on Petitioners' own theory*, they could claim the property only if they represent the "true church", KUPC.

Under settled California state law, the court below noted, issues of identifying the "true church" are deemed ecclesiastical questions.⁶ As such, they cannot be re-evaluated by the civil courts. Under this Court's decisions in *Jones* and its predecessors, therefore, the Court of Appeal was not only permitted, but constitutionally *required*, to give absolute effect to the determination of the Presbytery that the loyal faction, rather than Petitioners, is the KUPC entitled to own and occupy the property.⁷

⁴App. to Pet. for Cert. at 85; *Protestant Episcopal Church v. Barker*, 115 Cal. App. 3d 599, 615, 171 Cal. Rptr. 541, 549 (1981); *Presbytery of Riverside v. Community Church*, 89 Cal. App. 3d 910, 152 Cal. Rptr. 854 (1979).

⁵In fact, however, the court below concluded under state law that the actual beneficial owner of at least part of the property was PCUSA. See App. to Pet. for Cert. at 97-107; Part II-D *infra*.

⁶App. to Pet. for Cert. at 88-89, citing *Presbytery of Riverside*, 89 Cal. App. 3d at 922, 152 Cal. Rptr. at 860; *Horsman v. Allen*, 129 Cal. 131, 61 P. 796 (1900); and *Wheelock v. First Presbyterian Church*, 119 Cal. 477, 51 P. 841 (1897).

⁷It is uncontested that the Presbytery is the proper constitutional body to make this determination. See App. to Pet. for Cert. at 71-72, quoting ¶ G-8.0600 of the Book of Order.

C. The judgment is independently supported by the Court of Appeal's determination on neutral principles that Petitioners did not validly take control of the nonprofit corporation KUPC.

Despite *Jones*, Petitioners contend that the court below erred in not making its own determination as to which faction truly represents KUPC. The court below correctly rejected this contention. Beyond that, however, the court also indulged Petitioners' premise *arguendo*, and went on to hold that even if it could make such a determination for itself, Petitioners would still not prevail. Under clear California law, Petitioners no longer control or represent the entity (KUPC) in whose name they purport to claim the property. Thus, even if the propriety of deference to the Presbytery were still an open question, the outcome of this case would be the same either way, based on state law. Hence, this case is not a suitable candidate for certiorari.

This holding of the court below is found at App. to Pet. for Cert. at 92-97. Briefly, the court started from Petitioners' premise that the property belongs to the nonprofit corporation, KUPC; and then, to paraphrase the Chief Justice's phrase, it asked "if the real [KUPC] would please stand up". *Serbian Eastern Orthodox Diocese*, 426 U.S. at 726 (Rehnquist, J., dissenting). Pursuant to California law, the court examined the corporate governing documents of both KUPC and PCUSA to determine what mechanisms are involved in the control and governance of KUPC as a local congregation of PCUSA. It held that there had never been a valid meeting of KUPC's membership or its session (its governing body) at which Petitioners' faction had taken control of KUPC, changed its by-laws, withdrawn from the Presbytery, or otherwise acted to cut its ties with PCUSA. Although

Petitioners claimed to have held such a meeting in March 1989, that action was held to be a legal nullity as far as it purported to affect the control or governance of KUPC. First, Petitioners themselves had previously voluntarily withdrawn from KUPC, so that they no longer had any right to a say in its affairs. Second, pursuant to valid corporate powers and state law, in November 1988 the Presbytery had removed Petitioners' faction from KUPC office and appointed an administrative commission as successor. And third, the Book of Order (which was incorporated into KUPC's own by-laws) provided that only the Presbytery, not the KUPC session or membership, had the legal authority to dissolve the tie between PCUSA and KUPC.

Petitioners complain that this analysis impermissibly looked to "religious" documents such as the governance documents of KUPC and PCUSA — although they do not identify to what other sources the court could have looked instead. In any event, this Court's decisions uniformly approve reliance on church constitutions and other documents of governance, provided only that the courts "scrutinize the document in purely secular terms" and defer to religious authorities for the determination of any issue of religious doctrine or church polity. *Jones*, 443 U.S. at 604; *Maryland & Va. Eldership*, 396 U.S. at 367-68.

Petitioners do not suggest any manner in which the court below violated these settled precepts. This portion of the Court of Appeal's decision is scrupulously careful in its reading of the pertinent documents "in purely secular terms"; indeed, it reads very much as if this were a garden-variety corporate control case for a non-religious non-profit entity, or even an ordinary for-profit business. There is no hint of deference, improper or otherwise, to the decisions of ecclesiastical authorities. The court (on

an *arguendo* basis) has simply taken Petitioners at their word that it ought to decide the corporate control issue for itself, based on California law and a secular reading of neutral sources — and having done as Petitioners demanded, it has still ruled against them on the merits. So where is the constitutional issue?

D. The judgment below is further independently supported by PCUSA's use of an express trust provision as invited by this Court in *Jones*.

In *Jones*, this Court went out of its way to give clear guidance to hierarchical churches as to how they could secure the right of the national denomination to control the use and disposition of local congregation property:

Through appropriate reversionary clauses and trust provisions, religious societies can specify what is to happen to church property in the event of a particular contingency, or what religious body will determine the ownership in the event of a schism or doctrinal controversy. In this manner, a religious organization can ensure that a dispute over the ownership of church property will be resolved in accord with the desires of the members.

....

... At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church.

In this case, both the State of California and PCUSA have taken the Court's invitation. PCUSA's Book of Order provides in unmistakable terms that

All property held by or for a particular church, a presbytery, a synod, the General Assembly, or the Presbyterian Church (U.S.A.), whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, . . . is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.).

App. to Pet. for Cert. at 71, quoting ¶ G-8.0200 of the Book of Order. The California Court of Appeal held that, under California law, this provision was validly incorporated into the by-laws of KUPC itself. The court concluded that it was bound to give effect to this express trust language by California statute, Cal. Corp. Code § 9142(c) (2):

(c) No assets of a religious corporation are or shall be deemed to be impressed with a trust, express or implied, statutory or at common law unless one of the following applies:

. . . .

(2) Unless, and only to the extent that, the articles or bylaws of the corporation, or the governing instruments of a superior religious body or the general church of which the corporation is a member, so expressly provide.

All other issues aside, this holding alone is more than sufficient to support the judgment below on purely state law grounds. Indeed, Petitioners do not assail the constitutionality of § 9142(c) (2). Their criticisms of its application here, besides being vague and unpersuasive, are simply disagreements with the Court of Appeals as to

matters of state law. Petitioners present no hint of a federal constitutional question that could affect this basis for the judgment below.

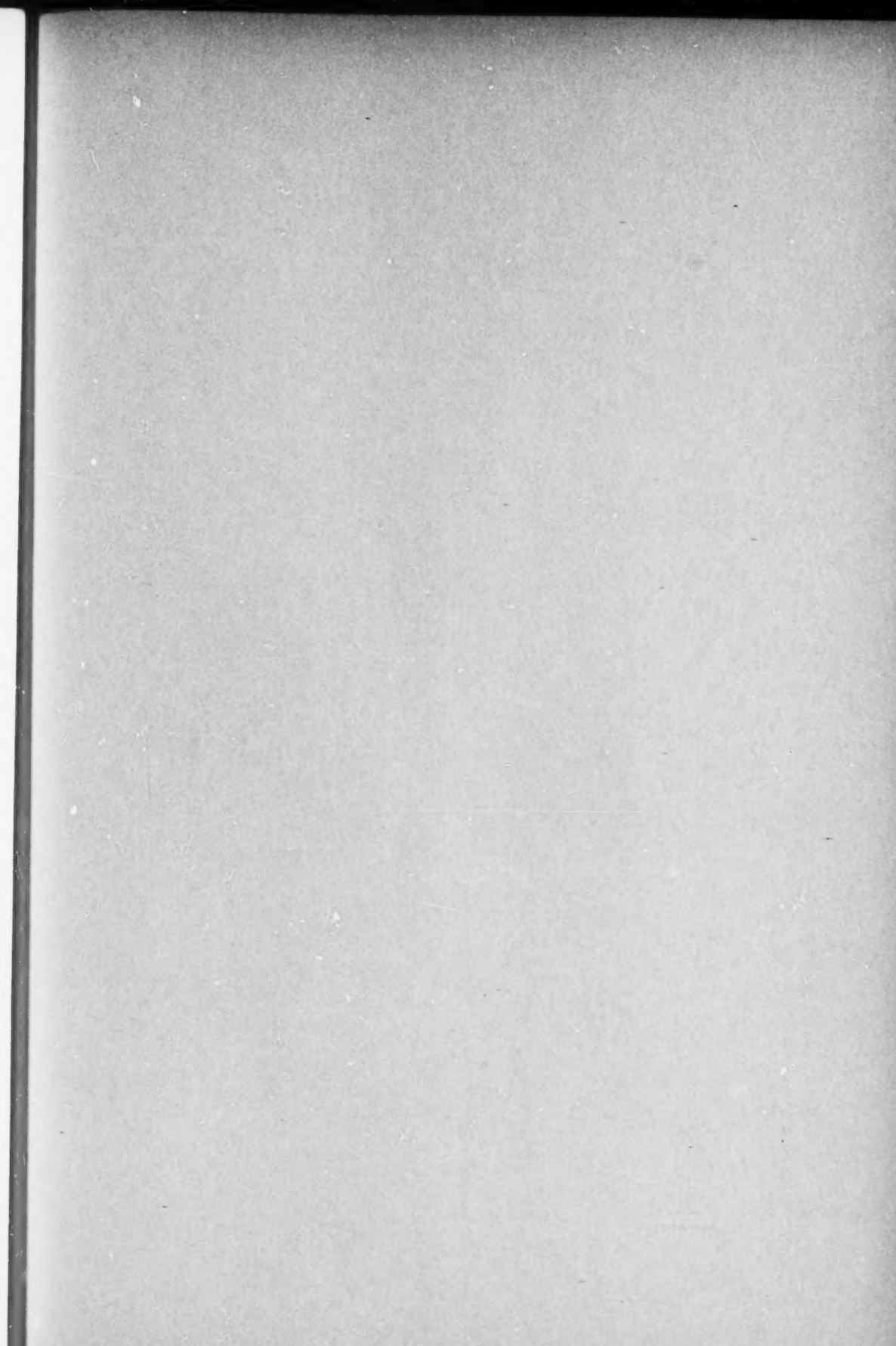
CONCLUSION

Petitioners contend that the state courts require more "guidance" from this Court as to the content of the "neutral principles" that they may apply in adjudicating church property disputes. What Petitioners really mean, Respondents respectfully submit, is that Petitioners do not like the particular neutral principles adopted by the State of California, nor the result that those principles have yielded in this case. Petitioners identify no defect in the current state of First Amendment law on this topic, nor do they make any substantial showing that that law was not complied with in this case. There is no issue presented here that comes close to calling for certiorari.

Dated: December 27, 1991

Respectfully submitted,

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No. 91-879

Supreme Court, U.S.

FILED

JAN 21 1992

OFFICE OF THE CLERK

In The
Supreme Court of the United States

October Term, 1991

KOREAN UNITED PRESBYTERIAN
CHURCH OF LOS ANGELES,

Petitioner,

v.

PRESBYTERY OF THE PACIFIC;
SYNOD OF SOUTHERN CALIFORNIA
AND HAWAII; THE UNITED PRESBYTERIAN
CHURCH OF THE UNITED STATES,

Respondents.

On Petition For A Writ Of Certiorari
To The Court Of Appeal
Of The State Of California

REPLY TO BRIEF IN OPPOSITION

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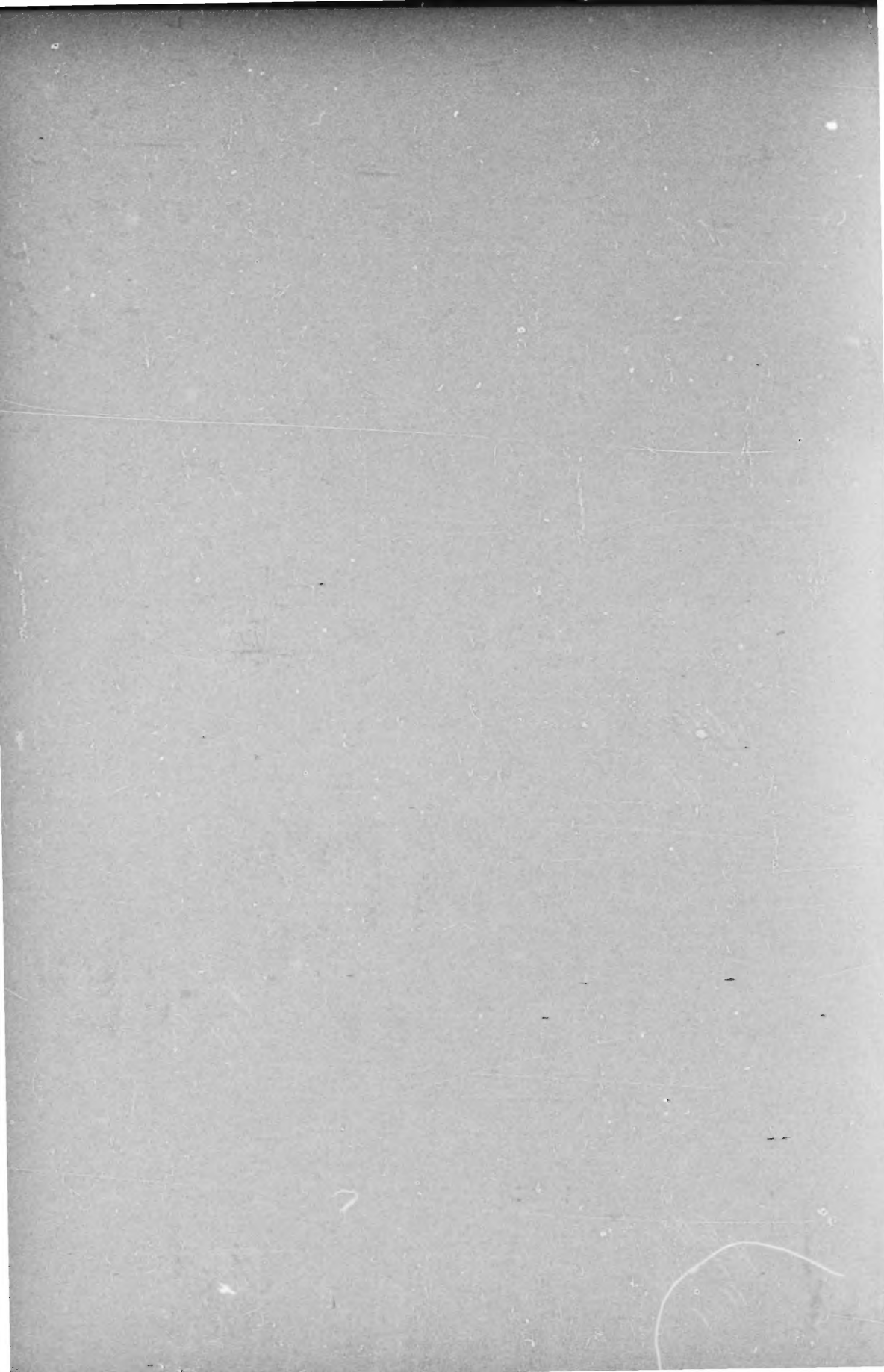


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REPLY TO BRIEF IN OPPOSITION

Petitioner, the Korean United Presbyterian Church of Los Angeles, Inc., respectfully requests that the Court grant its petition for writ of certiorari.

In almost every instance, a dispute between competing factions of a church congregation over ownership of church property touches upon the interests protected by the religion clauses of the First Amendment. At the very least, one group will have its right to the free exercise of religion impaired by losing access to what had been its religious sanctuary. When, as here, the dispute is between a superior body in a hierarchical church and the overwhelming majority of one of its congregations, a judicial determination of ownership will aid or hinder a particular form of religious organization, as well as affecting the free exercise interests of a portion of the congregation.

Ideally, when confronted with such constitutionally sensitive questions, a court will tread cautiously, leaving questions of religious doctrine to church authorities while at the same time protecting to the extent constitutionally permissible the interests of the members of a particular religion in the property they may have purchased and improved. Unfortunately, as this case demonstrates, the constitutionally required course is not always easy to follow.

Not surprisingly, respondents have attempted to disguise the extent to which religion clause issues necessarily are a part of any religious property determination, and to characterize the determination of the court below as a mere application (or misapplication) of state law. On the contrary, in reversing the trial court, the California

Court of Appeal enmeshed itself in resolving conflicting beliefs respecting authority within the Presbyterian Church in violation of the Establishment Clause.

Instead of examining doctrine-neutral materials to determine whether petitioner Korean Church owned the property, the Court of Appeal accepted at the outset and without question the Presbytery's designation of the minority faction as the "true" church. Leaping ahead in the process, the court of appeal looked *first* to the organizational documents of the Presbyterian Church and gave conclusive preference to selected portions of the *religious* documents over and above the neutral, statutorily created power of the members of a non-profit corporation to govern the affairs of that corporation.

Thus, it is apparent that inquiries under the neutral principles approach are not so easily compartmentalized as this Court might have wished. The determination below was ultimately the "official . . . preference" of one religious entity over another "that the Framers of the First Amendment forbade." *Larson v. Valente*, 456 U.S. 228, 255 (1982).

1. Respondents twice question whether petitioners are, in fact, the Korean United Presbyterian Church. See Brief in Opposition at ii, 2. There is no dispute that, after a dispute over the refinancing of church property that had been acquired and improved by petitioner and its antecedents, an overwhelming majority of the members of the Korean United Presbyterian Church voted to sever their affiliation with respondents. There can also be no contention that, however named, that group would not

have standing to challenge the decision first of the Presbytery and then of the California Court of Appeal, to find a trust in favor of the parent church.

The determination of the California Court of Appeal that the religious corporation, the Korean United Presbyterian Church, Inc., is no longer comprised of the vast majority of its members is one of the issues for which this Court's review is sought. Indeed, that portion of the decision below is typical of the extent to which the court of appeal give preference to the Book of Order, the religious constitution of the Presbyterian Church, over the secular organizational structure of the Korean United Presbyterian Church. Like most if not all states, California provides that churches may organize themselves as non-profit corporations, *see* Cal. Corp. Code §§ 9400 et seq., as did the Korean United Presbyterian Church in 1945. Thus, a church has a dual existence, both as a congregation within a denomination and as an independent California corporation whose governing members are its congregants.

No doubt a religious corporation could subordinate its governance to a superior body within the denominational hierarchy. Indeed, California law specifically provides that a local congregation may, under certain circumstances, impose upon its property a trust in favor of a superior religious body. Significantly, such trusts are to be found only if precise and rigorous requirements are met. The requirements of California law are not the issue here, but the policy underlying them is instructive of how the court below should have approached the case. The court should have deferred to the local congregation's exercise of its powers as a non-profit corporation in

determining its religious affiliation in the absence of specific provisions of its bylaws and articles of incorporation requiring deference to superior religious bodies. For the court to do otherwise is to cast aside the neutral principles to which it purported to adhere in favor of an ill-defined – and constitutionally precluded – effort to reconcile incompatible provisions of local and hierarchical governance. Here, in purporting to set aside the vote of the members of the Korean United Presbyterian Church in favor of the determination of the respondent Presbytery, the California Court of Appeal found a sufficient basis for ignoring the well established rules of governance for non-profit corporations in a single phrase of the bylaws, to the effect that the corporation “shall be at all times subject and adhere to the doctrines and discipline of the Presbyterian Church.” App. 72. Obviously, the interpretation of the content and meaning of the “doctrines and discipline of the Presbyterian Church” is a religious question that the court should not have answered.

2. Respondents also complain about the extent to which petitioner relied on the findings of the trial court in setting forth the issues upon which the writ of certiorari should be granted. To a considerable extent, it is respondents’ reliance on the largely factual determinations of court of appeal that is questionable, for it stands the normal appellate doctrine of deference to trial court factual findings on its head. Respondents’ gleeful embrace of the court of appeal opinion may be a function of how familiar its contents are to respondents. In place

of the reasoned and considered opinion of the trial court, which weighed the evidence favoring both sides and resolved the trust and land ownership issues in accordance with well-established common law and trust principles, the court of appeal simply adopted for its opinion – verbatim except for deleting the heading “Argument” from the beginning of the legal section – the respondents’ brief.¹

3. Although respondents would have it that the decision below rested on three independent grounds, the various reasons given by the court for its decision are all dependent on its interpretation of the 1945 articles of incorporation of the Korean United Presbyterian Church. See Brief in Opposition at 10-17. The determination as to the “true” identity of the Korean United Presbyterian Church, the resolution of the application of certain trust provisions of the Book of Order, and the misapplication of California State Law were all founded on general

¹ The religious adherence of the Court of Appeal to respondents’ arguments led to wholesale inclusion of factual and legal errors that are typified by the holding that “[California] Corporations Code section 9142, subdivision (d) creates a presumption of a trust in the church property.” App. 101. First, it should be noted that the court repeated a typographical error from respondents’ brief below: the reference should have been to subsection (c), because subsection (d) pertains to the amendment of trusts, not to their creation or existence. More significantly, however, subdivision (c), far from creating a *presumption* of a trust, in fact creates a rebuttable presumption *against* one. See Cal. Corp. Code § 9142(c) (West 1991) (“No assets of a religious corporation are or shall be deemed to be impressed with a trust, express or implied, statutory or at common law, unless one of the following applies. . . .”)

promises of fealty to doctrine and general statements of authority in the 1945 articles of incorporation and bylaws. Thus, article six provided, "that this corporation shall be at all times subject and adhere to doctrines and discipline of Presbyterian Church. . . ."; and bylaw article 62 stated, "As a general rule, any matter not provided for in these bylaws shall be determined in accordance with the Book of Order".

Significantly, the articles and bylaws were adopted during the time that the Korean United Presbyterian Church was affiliated with the United Presbyterian Church (before its merger with the Presbyterian Church in the United States), and was not subject to a trust provision over its property. Moreover, even after the reunion, the Korean United Presbyterian Church had the power under the Church constitution to opt out of trust provisions, as it did.

The importance of these aspects of the record below is not to provide a basis for this court to second guess the determinations of the court of appeal (much as the court of appeal second guessed the trial court), but to illustrate the extent to which the California court muddled the two different approaches it attempted to apply. In place of deference to hierarchy or the secular application of neutral principles, the court engaged in a selective reading of the documents controlling church governance, and in a forbidden inquiry into church polity and doctrine that offended the Establishment Clause of the First Amendment.

4. The nub of this case is the extent to which it is consistent with the limitations placed on the resolution of

church property disputes by *Jones v. Wolf*, 443 U.S. 595 (1979), and whether, in light of intervening experience as exemplified by this case, the constitutional hazards of civil adjudication of church property disputes are adequately addressed by *Jones*. While respondents would argue that *Jones* leaves to the states the decision about what method to use in resolving church property disputes, it is clear that Free Exercise and Establishment Clause issues always lurk in such determinations. See, e.g., *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969).

When it approved the application of neutral principles to church property disputes, the Court broadened the inquiry state courts could make to include such problematical documents as the parent and local churches' organizational documents, see *Jones v. Wolf*, 443 U.S. at 603, but also imposed the requirement that the documents be examined in "purely secular terms." *Id.* at 604. In the present case, the court of appeal went beyond a purely secular examination of the Presbyterian Church's structure and authority, and this court's vigilant supervision of the constitutionally mandated line is sorely needed.

When *Jones* was decided, the court recognized that the approval of neutral principles would lead to at least "occasional problems in application." *Id.*

These problems . . . should be gradually eliminated as recognition is given to the obligation of "States, religious organizations, and individuals [to] structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions."

Id. (quoting *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. at 449). Indeed, in the interim, California has adopted laws requiring that trusts respecting church property must be detailed and explicit. See Cal. Corp. Code § 9142 (West 1991). At the time this dispute arose, the Presbyterian Church was, after reunification of its two branches, in a period of transition toward unambiguous statements of the trust relationship it intended to establish with its congregations.²

Jones was decided before the movement toward precise requirements for the creation of property trusts had begun in earnest. This case arose at a transitional stage in the process, when far-from-unambiguous organizational documents co-exist with state corporation law provisions that are sensitive to the Court's recognition in *Jones* that such provisions can avoid constitutional difficulties. As a result, the state court was left to perform a function that was not described in *Jones*, reconciling relatively clear provisions of state religious corporation law with the far

² Although the respondents claim they followed the direction of *Jones* with respect to securing control of denominational property, the record in this case shows that, at best, respondents had accomplished some but not all of the steps required for unambiguous control. For example, although the Book of Order included a trust provision, the Book of Order also included a provision permitting the Korean United Presbyterian Church (among others) to opt out of the trust provision. Moreover, the "deeds" had not been "modif[ied]," nor did the "corporate charter . . . include a right of reversion or trust in favor of the general church." *Jones*, 443 U.S. at 603.

more ambiguous provisions of the organizational documents of petitioner and respondents. By essentially ignoring the statutory provisions, and by launching instead on an inquiry into the interstices of church governance, the court of appeal violated the Establishment and Free Exercise Clauses of the First Amendment.

CONCLUSION

The petition for a writ of certiorari should be granted.

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